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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1031

DANIEL SIFTON, ERIC SIFTON, and LORI SIFTON, minors, BY ELSIE CAROLINE SIFTON and ASHFORD DAVID SIFTON, THEIR GUARDIANS,

Petitioners,

vs.

RICHARD THOMAS MURPHY; CURTIS PODRATZ; and DOES 1 through 20, Inclusive,

Respondents.

FREDERICK CHRISTIAN FRIES,

Petitioner,

vs.

CITY OF INGLEWOOD, STEVE COMBS, CHUCK NORRIS KARATE STUDIOS, INC., DOES 1 through 20, Inclusive.

Respondents.

PETITION FOR WRIT OF CERTIORARI

THOMAS V. GIRARDI
WEST & GIRARDI
445 South Figueroa Street
Suite 1750
Los Angeles, CA 90017

Attorneys for Petitioner

Vol. I

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PETITION FOR WRIT OF CERTIORARI

A SUMMARY STATEMENT OF THE PETITIONERS' CONTENTIONS.

Sifton v. County of Ventura is an action brought by the minor plaintiffs for the wrongful deaths of their parents.

Fries v. City of Inglewood is an action for personal injuries suffered by the adult plaintiff.

The plaintiffs in both actions were dismissed, by way of demurrer, for failure to comply with the California Government Tort Claims Act (California Government Code §§900 et seq.). Essentially, the tort claims act requires a plaintiff to file a claim with the public entity involved within 100 days of the accrual of the cause of action (California Government Code §911.2). In the case of minors, such as the plaintiffs in Sifton, relief will be granted from the 100 day claim requirements if a proper request is made within one year of the accrual of the cause of action (California Government Code §946.6).

In no case may a plaintiff file a civil action against a public entity before a claim has been duly made and denied (California Government Code §945.4).

The minor plaintiffs in Sifton did not file a claim with the County of Ventura within 100 days of the death of their parents, nor did they seek relief from the 100 day requirement within one year from their parent's death. Likewise, the adult plaintiff in Fries did not file a claim within 100 days from the date he was injured as a result of the negligence of certain employees of the City of Inglewood.

Generally, in California the statute of limitations for minors is tolled until they reach their eighteenth year. In the case of adult plaintiffs the statute of limitations in a personal injury action is one year (California Civil Code §340). In both Fries and Sifton had the defendants been private rather than public tort feasors the statute of limitations would not have acted as a bar to the causes of action of the respective plaintiffs.

The petitioners in both cases contend that the arbitrary treatment of the victims of governmental tort feasors (as opposed to the victims of private tort feasors) bears no rational relationship to any legitimate state purpose in enacting the California Government Tort Claims Scheme (California Government Code §§900 et seq.).

Secondly, the petitioners in both cases contend that the limited waiver of soverign immunity represented by the California Government Tort Claims Scheme violates the due process clause contained in the XIVth Amendment

to the United States Constitution. The California Government Tort Claims Scheme is a capricious and arbitrary exercise of legislative power whereby a wrongful and highly injurious invasion of the claimants' property rights is sanctioned and the litigant who fails to submit the notice of claim is stripped of all real remedy.

The highest courts of the states of Michigan, Washington, and Nevada have held government tort claims statutes essentially the same as California's violative of the due process and equal protection clauses of the XIVth Amendment to the United States Constitution (Mich.: Reich v. State Highway Dept., 386 Mich. 617, 194 N.W. 2d 700 (1972); Wash: Jenkins v. State, 540 P. 2d 1363 (Wash. 1973); Nev.: Turner v. Staggs, 89 Nev. 230, 510 P. 2d 879 (1973); See also Krause v. State (Ohio - 1971) 28 Ohio App. 2d 1, 57 Ohio Ops. 2d 1, 274 N.E. 2d 321.)

The Supreme Court of California has upheld the California Government Tort Claims Scheme (Tammen v. County of San Diego, 66 Cal. 2d 468 (1967); Whitfield v. Roth, 10 Cal. 3d 874 (1974); see also Roberts v. State of California, 39 Cal. App. 3d 844, 848-850, the most comprehensive statement of the California position regarding the Constitutionality of California Government Code §§ 911.2, 946.6, 945.4).

In view of this divergence of views by the various state courts as to the proper application of the due process and equal protection clauses of the XIVth Amendment to this area of nationwide and pressing interest, petitioners respectfully request that this Court grant the instant petition for writ of certiorari.

PETITION FOR WRIT OF CERTIORARI

Petitioners pray that a writ of certiorari issue to review the judgment herein of the California Supreme Court entered regarding both of the above-entitled cases on October 23, 1975.

OPINION BELOW

Sifton v. County of Ventura

On December 28, 1973, the Superior Court of the State of California, for the County of Ventura, sustained without leave to amend respondent County of Ventura's demurrer to minor petitioners' second amended complaint (in an action to recover damages for wrongful death) on the grounds that Petitioners had not complied with the California Tort Claims Act

and that the statute of limitations was a bar to Petitioner's complaint. Judgment of Dismissal as to Respondent County of Ventura was filed on January 8, 1974 (C.T. p. 201) and Notice of Entry of Judgment as to respondent County was filed January 9, 1974 (C.T. p. 203).

Petitioners' filed their Notice of Appeal on January 25, 1974 (C.T. p. 204). The Court of Appeal, Second Appellate District, State of California in an opinion not to be published in the official reports, Sifton v. County of Ventura, 2d Civil No. 44073 (Ct.App., filed June 30, 1974) (Appendix A) affirmed the judgment of the Superior Court.

The Petitioners' request for review by the California Supreme Court of the decision of the Court of Appeal, Second Appellate District, State of California, and of the Superior Court of the State of California, for the County of Ventura was denied without benefit of a hearing by the California Supreme Court on October 23, 1975. Sifton v. County of Ventura, 2d Civil No. 44073 (October 23, 1975).

Fries v. City of Inglewood

On October 24, 1974, petitioner Frederick Christian Fries suffered personal injuries as a result of the negligence of the City of Inglewood and its employees.

Although he had contacts with employees of the City of Inglewood, respondent here, arising out of the incident, Mr. Fries was not informed of the necessity of making a formal written claim pursuant to the California Tort Claims Act with the City of Inglewood until after the 100 day notice period had run, February 21, 1973.

Mr. Fries consulted with an attorney soon after that date and an application for leave to file a late claim was filed with the city on March 7, 1973. On April 23, 1973, the application was deemed denied. On October 3, 1973, Fries filed his petition for relief from the claims filing requirements in Superior Court. The petition was denied by the Hon. David A. Thomas, presiding in Department 85 of the Los Angeles Superior Court, on October 30, 1973. The trial court's judgments were affirmed by Second Appellate District, Division Two, on June 30, 1975, in an opinion not to be published in the official reports. Fries v. Combs, 2d Civil No. 45104 (Ct.App., filed June 30, 1975).

The petitioners' request for State Supreme Court review of the decision of the Court of Appeal, Second Appellate District, State of California and of the Superior Court of the State of California, for the County of Los Angeles was denied without benefit of a hearing by the California Supreme Court on October 23, 1975. Fries v. City of Inglewood, 2d Civil No. 54104 (October 23, 1975).

JURISDICTION

Sifton v. County of Ventura

The dismissal of the petition for hearing by the California Supreme Court was entered on October 23, 1975. Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

Fries v. City of Inglewood

The dismissal of the petition for hearing by the California Supreme Court was entered on October 23, 1975. Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

1. Are the California Notice of Claim Statutes (California Government Code §§900, et seq.) unconstitutional on their face and as applied to both adults and minors in that they are violative of the due process and equal protection guarantees of the XIVth Amendment to the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

Section 1. "...[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

XIV Amendment, United States Constitution.

STATUTORY PROVISIONS INVOLVED

California Government Code §905, 910, 911.2, 911.4, 915, 945.4, 945.6, 946.6 (full texts set forth in appendix).

STATEMENT OF THE CASE

Sifton v. County of Ventura

This wrongful death action arises out of a highway accident that occurred on February 21, 1971 on Highway 23, County of Ventura. On that date, defendant Podratz swerved to avoid an approaching car causing his car to run

onto the shoulder of the highway. As a result of the alleged negligent design and construction of the shoulder, Podratz' car swerved across the roadway striking a motorcycle ridden by petitioners' parents, David Franklin Sifton and Constance Rae Sifton. Mr. and Mrs. Sifton died as a result of the collision and are survived by the minor petitioners here: Daniel Sifton (age 13 at the time); Eric Sifton (age 9 at that time); and Lori Sifton (age 8 at that time). On March 22, 1971, the petitioner's grandparents, Elsie Caroline Sifton and Ashford David Sifton were appointed their legal guardians.

The procedural chronology of the lawsuit bears on the issues and must be summarized here very briefly.

The main action is an action for wrongful death brought by the heirs-at-law of decedents against Richard Thomas Murphy, Curtis Podratz, and DOES 1 through 20, inclusive. This action was filed by petitioners on July 6, 1971, who were unaware at that time of a possible theory of negligence against the County of Ventura, (joined as DOE 1 September 6, 1973).

On May 21, 1971, defendant Curtis Podratz filed a claim against respondent County of Ventura (C.T. p. 75-79).

Said claim was denied by operation of law July 6, 1971.

It will be recalled that independent of defendant Podratz' actions petitioners here filed for wrongful death against defendants Podratz and Murphy on July 6, 1971.

On January 6, 1972, defendant Podratz moved to file a cross-complaint against County of Ventura, et al.

After a series of demurrers, defendant and cross-complainant Podratz filed his First Amended Complaint on August 2, 1973.

On August 8, 1973, the parties to the main action stipulated to the filing of a First Amended Complaint by petitioners here adding a theory of negligent road design to plaintiff's previous allegations. Thereafter, respondent County was served as DOE I with the First Amended Complaint.

On September 6, 1973, respondent County of Ventura demurred to plaintiffs' First Amended Complaint, which demurrer was granted with twenty days to amend.

On November 1, 1973, petitioners here filed the Second Amended Complaint (C.T. p. 157) to which respondent demurred on November 26, 1973.

On December 28, 1973, the Ventura County Superior Court, Honorable Richard C. Heaton presiding, sustained respondent's demurrers without leave to amend on the grounds that:

Plaintiffs had not complied with the California Tort Claims Act (California Government Code §§911.2, 945.4).

Notice of entry of judgment for respondent Ventura County was filed January 9, 1974 (C.T. p. 204). The District Court of Appeal affirmed the trial court's order (Div. 3) on June 30, 1975. Sifton v. County of Ventura, 26 Civil No. 44073 (Ct.App., filed June 30, 1975).

The petitioners request for State Supreme Court review of the decision of the Court of Appeal, Second Appellate District, State of California and of the ruling of the Superior Court of the State of California, for the County of Ventura was denied without benefit of a hearing by the California Supreme Court on October 23, 1975. Sifton v. County of Ventura, 2d Civil No. 44073 (October 23, 1975). The Constitutional issues presented by this writ were first raised in plaintiff's written appeal to the California Court of Appeals.

Fries v. City of Inglewood

On October 24, 1972, Frederick Christian Fries suffered personal injuries as a result of the negligence of the City of Inglewood and its

employees.

Mr. Fries, at various times, informed at least four City of Inglewood employees of the incident and at least two of those employees treated him for injuries suffered thereby (C.T. pp. 28-29).

In addition to the severe and painful physical injuries suffered by Mr. Fries, there is some indication by his treating doctors that Mr. Fries suffered emotional and psychological trauma as well (C.T. p. 7, line 25 and p. 8, line 3).

Although he had contacts with employees of the City of Inglewood, respondent here, arising out of the incident, Mr. Fries was not informed of the necessity of making a formal written claim with the City of Inglewood until after the 100 day notice period had run, February 21, 1973 (California Government Code §§ 911.2, 945.4).

Mr. Fries consulted with an attorney soon after that date and a leave to file a late claim was filed with the city on March 7, 1973. On April 23, 1973, the application was deemed denied. On October 3, 1973, Fries filed his petition for relief from the claims filing requirements in Superior Court. The petition was denied by the Hon. David A. Thomas, presiding in Department 85 of the Los Angeles Superior Court, on October 30, 1973. The trial court's judgments were affirmed by

Second Appellate District, Division Two, on June 30, 1975. Fries v. Combs, 2d Civil No. 45104 (Ct.App., filed June 30, 1975). The Petitioners request for State Supreme Court review of the decision of the Court of Appeal, Second Appellate District, State of California and of the Superior Court of the State of California, for the County of Los Angeles was denied without benefit of a hearing by the California Supreme Court on October 23, 1975. Fries v. City of Inglewood, 2d Civil No. 45104 (October 23, 1975). The constitutional issues raised in this writ were first raised in plaintiff's appeal to the California Court of Appeals.

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING OF THE COURT BELOW TO THE EFFECT THAT THE CALIFORNIA STATUTORY REQUIREMENT THAT A CLAIM MUST BE PRESENTED TO A PUBLIC ENTITY BEFORE SUIT MAY BE BROUGHT AGAINST SUCH ENTITY DOES NOT VIOLATE EITHER, ON ITS FACE OR AS APPLIED TO BOTH ADULTS AND MINORS, THE CONSTITUTIONAL GUARANTEES OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS, SINCE IN SO HOLDING, THE COURT BELOW VIOLATED PETITIONERS RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

The United States Constitution provides that no state shall deprive any person of property without due process of law and that no state shall deny to a person the equal protection of the laws.

United States Constitution, 14th Amendment.

Petitioners submit that the claim requirements of the California Government Code violate these provisions, both on their face and as applied to both adults and to minors.

The question of whether state Government Tort Claims Statutes such as California Government Code §900, et seq. violate the Due Process and Equal Protection Guarantees of the United States Constitution is a federal question of substance that has not heretofore been determined by this Court.

When an individual is injured by a tort for which an entity of the state government, or one of its employees, is responsible, he must, in order to seek judicial relief, go through a maze of requirements, replete with traps and exceptions, and exceptions to the exceptions, and other confusions and obstacles that do not exist for the non-government tort victim. The following are some of the requirements.

(1) In order to be eligible for relief, the victim, or his representative must present a claim for compensation to the entity which is allegedly responsible for the injury. (Government Code §§ 905, 910 and 915).

(2) All claims for personal injury must be presented within 100 days of the accrual of the cause of action. (Government Code § 911.2).

(3) A governmental tort victim cannot seek judicial relief until he has presented a claim and it has been rejected by the entity. (Government Code §945.4).

(4) The filing of a claim requirement is a mandatory condition which applies to minors as well as adults. Failure to meet the filing period of a hundred days can bar relief. Consequently, compliance with the claim requirement must be pleaded and proved in order to maintain a suit against the Government.

(5) Suits must be brought within six months of receiving notice of rejection of the claim from the public entity. (If a claimant does not receive a notice of rejection, he is allowed two years from the accrual of the cause of action in which to file suit. (Government Code §945.6).

(6) If the claimant does not file a claim within the one hundred days filing period, he may seek relief by following the procedures set forth in Government Code §946.6.

(7) The late claimant must first apply to the governmental

entity for permission to file a late claim. (Government Code §911.4).

(8) The application to the governmental entity for permission to file a late claim, must be made within a reasonable time, not to exceed one year from the accrual of the cause of action. (Government Code §911.4).

(9) If the application for permission to file a late claim is denied by the governmental entity, then within six months of the rejection the claimant may petition the court for permission to sue the entity without filing a claim. (Government Code §946.6).

(10) If the claimant is an adult he must establish that the failure to present the claim in a timely fashion was through mistake, inadvertence, surprise or excusable neglect. If the claimant was a minor during the entire one hundred day period specified in §911.2 this shall be deemed sufficient (§946.6). It should be noted that a minor is treated the same as an adult in that both have only one year from the accrual of the cause of action to file a petition

for permission to sue the government entity without filing a claim (946.6). Ordinarily a minor in California has until his majority to pursue a tort cause of action for personal injury or wrongful death. (Civil Code §340).

(11) If the court grants permission to sue without filing a claim, the claimant must file a suit within thirty days. (Government Code §946.6).

(12) If the court denies the claimant permission to sue the entity, then the claimant has forever lost his right to have a judicial determination on the merits of his case in order to seek recovery for his injuries.

The effect of the claims requirements is that the victim of a governmental tort in California is treated substantially different from the victim of a private tortfeasor.

The governmental tort victim not only carries different procedural burdens, but also encounters penalties that do not exist for the non-governmental tort victim.

One of the basic differences between the two types of tort victims is that each is controlled by separate time requirements. While

the non-governmental tort victim is only concerned with the statute of limitations, his counterpart must satisfy an initial time requirement as well as a different statute of limitations.

The governmental tort victim can be within the statute that would apply to his cause of action if it were not for the status of his tortfeasor, and still be barred from receiving relief because of the failure to meet either the initial claim filing period, or the shorter subsequent statute of limitations.

Although the California Supreme Court has upheld the constitutionality of California Government Code §900 et seq. against due process and equal protection attacks, Tammen v. County of San Diego, 66 Cal. 2d 468 (1967), recent decisions of the Supreme Courts of three sister states have held similar Governmental Tort Claims Statutes unconstitutional on the grounds that such statutory schemes violate either the due process or equal protection guarantees of the United States Constitution.

In a 1972 Michigan Supreme Court case, Reich v. State Highway Department, 194 N.W. 2d 700, 386 Mich. 617 (1972) the Court was faced with a statute essentially similar to the California scheme. The Michigan statute required that an injured plaintiff serve written notice of claim upon the public entity within 60 days of the accrual of the causes of action. The court held that the claims provisions violated due process as applied to minors.

In the case of Turner v. Staggs, 510 P. 2d 879 (1973) the Nevada Supreme Court was faced with statutory provisions which provided that no person shall sue a governmental entity of that state for a demand arising out of a governmental tort unless he first presents a claim within 6 months from the time such tort occurred. The Court held that such arbitrary treatment clearly violated equal protection guarantees of the state and United States Constitutions.

In the recent case of Hunter v. North Mason High School, 539 P. 2d 845 (1975) the Supreme Court of Washington was faced with the constitutionality of a state statutory scheme which required persons suing the government to give it notice of their claims within 120 days after the date on which the claim arose. The court held that such statutes unjustifiably discriminated against persons with claims against the government and its subdivision in violation of the equal protection clause of the Fourteenth Amendment to the U. S. Constitution.

Unlike the well reasoned opinions of the Nevada, Michigan and Washington Supreme Courts which found their respective claims statutes unconstitutional, the opinions of the California Supreme Court holding the California statutory claims scheme constitutional are conclusionary rather than analytical.

In Tammen v. County of San Diego, 66 Cal. 2d 468 (1967) the California Supreme Court posed for itself the question of whether the California claims statutes violate constitutional guarantees of due process and equal protection of the laws. The court answered the question with one word, no, and cited Dias v. Eden Township Hospital Dist., 57 Cal. 2d 502 (1962).

In Dias the California Supreme Court had previously upheld the statutory requirement that a claim be presented as a condition precedent to maintenance of actions against public entities. It came to its conclusion merely on the basis that "the principal purpose of such statutes is to give a public entity timely notice of the nature of claims against it so that it may investigate and settle those of merit without litigation," and that "public agencies, generally speaking, afford a proper subject for legislative classification."

The most recent articulation of the California Supreme Court view on this point was in the case of Whitfield v. Roth, 10 Cal. 3d 874 (1974) wherein footnote 20 the court stated:

> "In view of our disposition of the case, it is unnecessary to consider plaintiff's contention that the claims statutes are unconstitutional, both on their face and as applied to minors. However, we note that no arguments or authority

> have been brought to our attention which would suggest that our decision in Tammen v. County of San Diego, supra, 66 Cal. 2d 468, 481, 58 Cal. Rptr. 249, 426 P. 2d 753, upholding the constitutionality of the claims statute, is no longer valid."

It has been left, therefore, to the California Courts of Appeal to more fully explain the California position. In one of the cases at bar, Sifton v. County of Ventura, (cited supra) the Court of Appeal analyzed the California statutes in light of the Michigan Supreme Court case, Reich v. State Highway Department (cited supra) and the Nevada Supreme Court case of Turner v. Staggs (cited supra). In Sifton the Court of Appeal cited with approval the following language from another Court of Appeal case, Roberts v. State of California, 39 Cal. App. 3d 844, 848-850, as stating the rationale which resolves the constitutional conflict created when essentially similar state government claims statutes (such as California's, Nevada's and Michigan's) can be held to be constitutional by the Supreme Court of California on the one hand and violative of due process and equal protection by the Supreme Courts of Michigan and Nevada on the other.

> "The contention that the [California] claims statutes violate the equal protection of laws

provisions of the United States Constitution rests upon the assertion that by barring a lawsuit to a person who has not first filed a claim with a public entity within 100 days, while such a provision does not exist as a bar to other prospective defendants, an arbitrary or special class of wrongdoers has been established. It is argued that the California Legislature had intended, by its enactments permitting public entities to be sued, to place them on the same footing as private tortfeasors and that the 100-day limitation is an unreasonable classification and defeats the legislative intention. It is claimed that the 100-day notice requirement is a special statute of limitations arbitrarily barring actions by victims of governmental negligence while the victims of private negligence have one year in which to bring their actions. (Code Civ. Proc., §340.) Plaintiff's counsel relies upon cases in Nevada and Michigan in which it has been held that since legislation in those states had the principal goal of putting public entities on an 'equal footing' with private tortfeasors, any different treatment was an unreasonable classification. . . (Turner v. Staggs (1973) 89 Nev. 230 [510 P. 2d 879]; Reich v. State Highway Department (1972) 386 Mich. 617

[194 N.W. 2d 700]; cf., Krause v. State (1971) 28 Ohio App. 2d 1 [57 Ohio Ops. 2d 1, 274 N.E. 2d 321].) . . . There is a basic distinction, however, between statutes that aim at placing or actually do place the state or other public entities on an equal basis with private tortfeasors and our California statutes. Our statutes were enacted after the decision of the California Supreme Court in Muskopf v. Corning Hospital Dist. (1961) 55 Cal. 2d 211 [11 Cal. Rptr. 89, 359 P. 2d 457], which held that common law governmental immunity must be discarded and indicated a disposition to treat all tortfeasors, public and private, alike insofar as basic liability was concerned. The legislative response to Muskopf achieved a result entirely different from that which plaintiff urges should have been effected. It enacted a series of statutes to provide, in effect, that there is governmental immunity except for the very specific areas in which the statutes allowed suits. (See, Gov. Code, § 815; Nestle v. City of Santa Monica (1972) 6 Cal. 3d 920, 931-932 [101 Cal. Rptr. 568, 496 P. 2d 480].) Since the enactment of the statutes in question, courts have uniformly upheld them against constitutional attack and

particularly against a classification challenge. (Tammen v. County of San Diego, supra, 66 Cal. 2d 481; see also, Bozaich v. State of California, supra, 32 Cal. App. 3d p. 699; Hom. v. Chico Unified Sch. Dist. (1967) 254 Cal. App. 2d 335, 338 [61 Cal. Rptr. 920].) The argument in plaintiff's closing brief that 'when the state undertakes to divest itself from the cloak of immunity it must stand on an equal basis with other similarly situated tortfeasors' would have merit only if the California Legislature so provided, or in some legislative action indicated that the reasons for the claims statute no longer had compelling force. But it did not. The fact that other states moved in that direction is irrelevant. We are in agreement with the decisions just cited upholding the constitutionality of the time limitation provisions of the claims statutes involved herein."

The thrust of the California position is that in essence the state may deny due process and equal protection of the laws via its claims statutes because the state has made only a limited and conditional waiver of sovereign immunity. This argument will not bear constitutional scrutiny.

The rationale offered by the California Courts of Appeal was considered and rejected as unconstitutional by the Supreme Court of Washington in Jenkins v. State, 540 P. 2d 1363 (Wash. 1973). The court stated:

> "Respondent relies heavily on the majority view in Cook v. State, 83 Wash. 2d 599, 521 P. 2d 725 (1974) that Washington has made only a limited and conditional waiver of sovereign immunity. Thus, respondent argues, the state is free to impose whatever conditions it pleases with respect to actions against the state or any of its political subdivisions, municipal corporations or quasi municipal corporations. However, this argument rests on the erroneous assumption that because a state may validly choose either to maintain or to waive its sovereign immunity protection, any conditions, however arbitrary, that may be imposed in the process are constitutional. In reality, sovereign immunity has nothing to do with the ultimate classifications which conditions establish. Once sovereign immunity has been waived, even partially, any legislative classifications made with reference thereto will be constitutional only if they conform to the equal protection guarantees of the state and federal

constitutions.

> "Accordingly, in the absence of a rational basis for providing otherwise, all persons similarly situated must be provided equal access to the courts for the redress of wrongs committed by governmental entities." 540 P.2d at 1367-1368.

Further criticism of the constitutionality of the California position and of the constitutionality of Claims Statutes in general may be found in Note, "Notice of Claim Provisions: On Equal Protection Perspective," 60 Cornell L.Rev. 417 (1975) in which the author states:

> "Of the two broad avenues which the courts have taken in repelling constitutional attacks on notice of claim statutes - the rational relationship approach and the sovereign immunity approach - only the former is assessable in terms of equal protection. The latter, by its very nature, is violative of equal protection since it makes the illogical assumption that notice provisions are constitutional because a state may validly choose either to maintain or to waive its sovereign immunity protection, and that in the process any conditions, however arbitrary, may be imposed.

> In reality, sovereign immunity has nothing to do with the ultimate classifications which notice provisions establish. Standing alone therefore, this principle cannot be said to clothe the resulune distinctions with a semblance of rationality. Rather, once sovereign immunity has been waived, any legislative classifications made pursuant thereto will be constitutional only if they conform to the rational relationship test. Thus, the appropriate question for consideration is: do the classifications erected through notice of claim provisions have some rational relationship to the state's legislative purposes, or do they rest on grounds wholly irrelevant to the achievement of the State's objective?"
> 60 Cornell L.Rev. 417, 440 (1975)

1. The California Notice of Claim Statute is Violative of Equal Protection.

That Notice of Claim Statutes bear no rational relationship to the state's articulated legislative purpose in enacting them and thus violate the equal protection guarantees of the

Fourteenth Amendment is demonstrated by the rationale of the Supreme Court of Washington in Hunter v. North Mason High School (cited supra). There the court stated that the effect of the claim statutes:

> " is to deny a right of action to persons harmed by governmental misfeasance unless they provide the government with notice of their injuries within a short time after they occur. This prerequisite to tort recovery has no counterpart in actions between private parties. The statutes thus create two classes of tortfeasors, governmental and nongovernmental, and grant the one of procedural advantage not available to the other. Concomitantly they produce two classes of tort victims and place a substantial burden on the right to bring an action of one of them.
>
> "Just as the notice requirement by its operation divides the natural class of negligent tortfeasors, so too the natural class of victims of negligent conduct is also arbitrarily split into two subclasses: victims of governmental negligence who must meet the requirement, and victims of private negligence who are subject to no such requirements." 539 P.2d at 847 (Wash. 1975).

The court went on to say that claim statutes present a barrier for many victims of governmental misfeasance. Rarely does the average victim know of the short notice period or consult a lawyer prior to the expiration of his time to file. Claim statutes thus grossly magnify the unfair impact created by the unequal distribution of legal counsel and knowledge between the rich and poor.

The court noted that:

> "The effect of the notice requirement on tort victims not fortunate enough to be aware of it is to deny them their cause of action. The right to be indemnified for personal injuries is a substantial property right, not only of monetary value but in many cases fundamental to the injured person's physical well-being and ability to continue to live a decent life. Statutory classifications which substantially burden such rights as to some individuals but not others are permissible under the equal protection clause of the Fourteenth Amendment only if they are 'reasonable, not arbitrary, and . . . rest upon some ground of difference having a fair and substantial relation to the object similarly circumstanced shall be treated alike.' Royster Guano Co. v. Virginia, 253 U.S. 412, 415, 40 S.Ct. 560, 561,

64 L.Ed. 989 (1920). Reed v. Reed, 404 U.S. 71, 76, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971); Kahn v. Shevin, 416 U.S. 351, 255, 94 S.Ct. 1734, 40 L.Ed.2d 189 (1974); Dandridge v. Williams, 397 U.S. 471, 520-22, 90 S.Ct. 1153, 25 L. Ed.2d 491 (1970) (Marshall, J., dissenting); Washington Statewide Organization of Stepparents v. Smith, 85 Wash.2d 564, 572, 563 P.2d 1202 (1975) (Utter, J., concurring)."

The court continued in a footnote that:

"5. This 'substantial rationality' requirement has been reenunciated in recent decisions of the United States Supreme Court See Gunther, Foreword. In Search of Evolving Doctrine on a Changing Court; A Model for a Newer Equal Protection, 86 Harv. L.Rev. 1 (1972). It does not reduce the 'strict scrutiny' appropriate where fundamental rights or 'suspect classifications' are affected. See e.g., Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed2d 306 (1974); In re Griffiths, 413 U.S. 717, 93 S.Ct. 2851, 37 L.Ed.2d 910 (1973); State v. Koome, 84 Wash.2d 901, 530 P. 2d (1975). Nor does it alter the

strong presumption of constitutionality given classification in state regulation of business and economic matters, which are invalid only if they fail to bear a 'rational relationship' to a permissible state objective. Belle Terre v. Boraas, 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974); United States v. Kras, 409 U.S.434, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973); Sonitrol Northwest Inc. v. Seattle, 84 Wash.2d 588, 528 P.2d 474 (1974).

"According to Gunther, the court in some cases has been focusing on the substantiality of the relationship between the discrimination made and the state objective allegedly furthered thereby, rather than on the validity or importance of those objectives. See Gunther, supra at 20-24. If the statutory lines substantially conform to a permissible state purpose, the distinction they draw will survive judicial review without any 'balancing' of the relative value of the interests they advance and those they inhibit. If they do not they will not, for discriminatory legislation cannot be validated by reference to a purpose it does not serve, however laudable or important

that purpose may be.

> "We do not need to rest our decision in this case on the 'substantial basis' tests of Royster Guano Co. v. Virginia, 253 U.S. 412, 40 S.Ct. 560, 64 L.Ed. 989 (1920) alone, however: There is, in fact, not even a reasonable difference between the classes involved here which relates to a legitimate state interest. Cook v. State, supra, 83 Wash.2d at 607, 614, 521 P.2d 725 (concurring opinion); see footnote 8, infra."
> 539 P.2d at (1975).

The court went on to analyze the "grounds for difference" most often put forward as justification for special demands that claim statutes place on persons with claims against the government and found each of them insufficient to withstand constitutional scrutiny.

The court rejected the argument that the size of governmental institutions and the number of potentially liability producing incidence require that special notice be given so that the entity involved may adequately investigate and defend. The court noted that, as a class, governmental bodies are neither larger nor more liability-prone than the class of private tortfeasors which range from single individuals to giant corporations. In fact, in many instances governmental subdivisions are better

equipped to investigate and defend than most private tortfeasors for whom the law provides no special protection.

The court stated that other purported objectives of claims statutes are likewise inadequate to support the distinction they draw. Claims statutes do little to facilitate budget planning as governmental entities too small to self-insure will usually purchase insurance like any private individual or corporation. Similarly, quick notice of possible hazards in order to make needed repair is not more important simply because the entity responsible is governmental rather than private. Finally, encouraging negotiation and settlement and thereby reducing the amount of litigation is equally desirable for private as well as governmental entities.

When analyzed critically it becomes apparent that the only function that governmental claims statutes seem to perform is to protect the government from responsibility for its wrong doing.

The court concluded by saying:

> "We follow a growing number of courts in holding that the arbitrary burden placed on state claimants by this type of statute cannot withstand constitutional scrutiny."
> 539 P.2d at 851.

2. The California Notice of Claims Statute is Violative of Due Process.

Due process guarantees are also violated by notice of claim statutes.

Due process of law is, in its most fundamental sense, a limitation upon arbitrary power and a guarantee against arbitrary legislation. It further demands that the law shall not be unreasonable, arbitrary or capricious and that the means selected shall have a real and substantial relation to the object sought to be attained.

Basically, it has been stated that governmental claim requirements have a two fold purpose: (1) the entity should have an opportunity to investigate promptly while the evidence and witnesses are available. (2) The entity, having obtained full information should have an opportunity to settle meritorious claims without litigation. California Government Code 911.2 (West 1973); 38 Cal. L. Rev. 259.

As was demonstrated by the Washington Supreme Court in Hunter, supra, these original policy considerations today have lost their validity and cease to exist. Many governmental units and agencies are covered by liability insurance. In addition to insurance investigators, they have full-time attorneys at their disposal to

promptly investigate the causes and effects of alleged tortious acts. As a result, the governmental entity is generally better prepared to investigate and defend negligence suits than are most private tortfeasors to whom no special notice privileges have been granted by the legislature.

The victim of the governmental entity tortfeasor is thus stripped of all real remedy if he fails to submit the required notice of claim. Since there is no basis for the distinction made between the victim of the private tortfeasor and the victim of the governmental entity tortfeasor, the exercise of legislative power is here capricious and arbitrary.

It should also be noted that the right to be indemnified for personal injuries is a substantial property right, not only of monetary value but in many cases fundamental to the injured person's physical well-being and ability to continue to live a decent life.

Hunter v. North Mason High School, (cited, supra).

To allow the legislature to take away a plaintiff's cause of action because he could not meet the notice provisions of the government tort claims statute would be to deprive him of a vested right of action.

Notice of claim statutes similar to that of California have been successfully challenged

on due process grounds in the Supreme Court of Michigan. In Reich v. State Highway Department, (cited supra) the plaintiffs were minors suing for negligent failure to maintain public property. The Nevada Supreme Court held that the claim provisions violated due process as applied to minors. Noting that "the disabilities of minors, particularly of infants, have long been recognized and protected by the law" (194 N.W.2d at p. 701 the court adopted the following reasoning:

> ". . . we reject and overrule the reasoning under the (decisions upholding claims statutes) and condemn the purely capricious and arbitrary exercise of legislative power whereby a wrongful and highly injurious invasion of rights is sanctioned and the litigant who fails to submit the required notice of claim is stripped of all real remedy.: (194 N.W.2d at p. 701).

Generally, public policy, legislation and case law have all joined in seeking to protect the rights of minor claimants such as the petitioner in Sifton.

In Muskopf v. Corning Hospital District (1961) 55 Cal.2d 211, 11 Cal.Rptr. 89, the California Supreme Court concluded that governmental immunity from tort liability must be discarded as mistaken and unjust. The court

therein recognized that claimants are invested with a vested right in their cause of action against government entities. The court, however, refused to recognize the inherent unconstitutionality of government claim statutes the effect of which is to strip both adult and minor plaintiffs of their vested rights if the claim requirements are not met. This, of course, deprives them of due process of law in an arbitrary manner.

This Court should grant certiorari to settle the substantial constitutional conflict existing between the California Supreme Court and the Supreme Courts of three sister states as to whether essentially similar state notice of claim statutes violate the due process and equal protection guarantees of the United States Constitution.

CONCLUSION

The California Government Tort Notice of Claim statutes violate the equal protection and due process provisions of the United States Constitution. Both on their face and as applied to adults and minors, the statutory provisions create an unreasonable and unjust classification of tort victims dependent on the nature of the tortfeasor.

The question presented here has vast federal significance as the majority of states have essentially similar notice of claim statutes and as there is a growing conflict among the opinions of states faced with the question of the constitutionality of such statutes.

It is respectfully prayed that a writ of certiorari be granted to review the judgment of the California Supreme Court and to resolve the conflict which exists between the Supreme Court of California and the Supreme Courts of Michigan, Nevada and Washington, as well as the growing number of states which will soon be faced with the same dilemma.

Respectfully submitted,

WEST AND GIRARDI

By: Thomas V. Girardi

Attorney for Petitioners

Supreme Court, U. S.
FILED
JAN 21 1976
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1031

DANIEL SIFTON, ERIC SIFTON, and LORI SIFTON, minors, BY ELSIE CAROLINE SIFTON and ASHFORD DAVID SIFTON, THEIR GUARDIANS,

Petitioners,

vs.

RICHARD THOMAS MURPHY; CURTIS PODRATZ; and DOES 1 through 20, Inclusive,

Respondents.

FREDERICK CHRISTIAN FRIES,

Petitioner,

vs.

CITY OF INGLEWOOD, STEVE COMBS, CHUCK NORRIS KARATE STUDIOS, INC., DOES 1 through 20, Inclusive.

Respondents.

APPENDICES TO PETITION FOR WRIT OF CERTIORARI

THOMAS V. GIRARDI
WEST & GIRARDI
445 South Figueroa Street
Suite 1750
Los Angeles, CA 90017

Attorneys for Petitioner

Vol. II

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THOMAS V. GIRARDI
WEST & GIRARDI
445 South Figueroa Street
Suite 1750
Los Angeles, CA 90017

Attorneys for Petitioner

Vol. II

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CALIFORNIA SUPREME COURT'S DENIAL OF HEARING IN SIFTON VS. MURPHY.

US Sup Ct

CLERK'S OFFICE. SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

OCT 23 1975

I have this day filed Order

In re: 2 Civ. *No.* 44073

Sifton

MURPHY, US

County of Ventura

Respectfully,

G. E. BISHEL
Clerk

31248-877 2-75 3M OSP

APPENDIX B

CALIFORNIA SUPREME COURT'S DENIAL OF HEARING IN FRIES VS. CITY OF INGLEWOOD.

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102
OCT 23 1975

I have this day filed Order

In re: 2 Civ. *No.* 45104

Fries

vs.

City of Inglewood

Respectfully,

G. E. BISHEL
Clerk

31248-877 2-75 3M OSP

APPENDIX C

APPLICABLE CALIFORNIA GOVERNMENT CODE SECTIONS:

§ 905. Claims for money or damages against local public entities; law governing presentation; exceptions. There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against local public entities except:

(a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers' or materialmen's liens.

(c) Claims by public employees for fees, salaries, wages, mileage or other expenses and allowances.

(d) Claims for which the workmen's compensation authorized by Division 4 (commencing with Section 3201) of the Labor Code

is the exclusive remedy.

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims which relate to a special assessment constituting a specific lien against the property assessed and which are payable from the proceeds of such an assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the State or by a state department or agency or by another local public entity.

(j) Claims arising under any provision of the Unemployment Insurance Code, including but not limited to claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or

interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 (Commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(l) Claims governed by the Pedestrian Mall Law of 1960, Part 1 (commencing with Section 11000) of Division 13 of the Streets and Highways Code. (Added Stats. 1963, c. 1715, p. 3372, § 1.)

§ 910. Contents of Claim. A claim shall be presented by the claimant or by a person acting on his behalf and shall show:

(a) The name and post office address of the claimant;

(b) The post office address to which the person presenting the claim desires notice to be sent;

(c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;

(d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim;

(e) The name or names of the public employee or employees causing the injury, damage, or loss if known; and

(f) The amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. (Added Stats. 1963, c. 1715, p. 3374, § 1, as amended Stats. 1965, c. 653, p. 2010, §1.)

§ 911.2 Time for presentation of claims. A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than the 100th day after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than one year after the accrual of the cause of action. (Added Stats. 1963, c. 1715, p. 3372, § 1.)

§ 911.4 Application to present late claim; one year limitation; statement of reasons; tolling of limitations

(a) When a claim that is required by Section 911.2 to be presented not later than the

100th day after the accrual of the cause of action is not presented within such time, a written application may be made to the public entity for leave to present such claim.

(b) The application shall be presented to the public entity as provided in Article 2 (commencing with Section 915) of this chapter within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim. The proposed claim shall be attached to the application. In computing the one-year period under this subdivision, time during which the person who sustained the alleged injury, damage, or loss is a minor shall be counted, but the time during which he is mentally incapacitated and does not have a guardian or a conservator of his person shall not be counted. (Amended by Stats. 1970, c. 411, p. 822, § 1.)

§ 915. Presentation to local public entity. (a) A claim, any amendment thereto, or an application to the public entity for leave to present a late claim shall be presented to a local public entity by:

(1) Delivering it to the clerk, secretary or auditor thereof; or

(2) Mailing it to such clerk, secretary or auditor or to the governing body at its principal office.

(b) A claim, any amendment thereto, or an application for leave to file a late claim shall be presented to the state by:

(1) Delivering it to an office of the State Board of Control; or

(2) Mailing it to the State Board of Control at its principal office.

(c) A claim, amendment or application shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided in this section if it is actually received by the clerk, secretary, auditor or board of the local public entity, or is actually received at an office of the State Board of Control, within the time prescribed for presentation thereof.

(d) A claim, amendment or application shall be deemed to have been presented in compliance with this section to a public agency as defined in Section 53050 if it is delivered or mailed within the time prescribed for presentation thereof in conformity with the information contained in the statement in the Roster of Public Agencies pertaining to that public agency which is on file at the time the claim, amendment or application is delivered or mailed. As used in this subdivision, "statement in the Roster of Public Agencies" means the statement or amended statement in the Roster of Public Agencies in the office of the Secretary of State or in the office of the county clerk of any county

in which such statement or amended statement is on file. (Added Stats. 1963, c. 1715, p. 3372, § 1, as amended Stats. 1965, c. 653, p. 2012, § 8.)

§ 945.4 Necessity of written claim acted upon by board or deemed to have been rejected. Except as provided in Sections 946.4 and 946.6, no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division. (Added Stats. 1963, c. 1715, p. 3383, § 2, as amended Stats. 1965, c. 653, p. 2014, § 17.)

§ 945.6 Limitation of actions on claims required to be presented in accordance with chapters 1 and 2 of part 3; persons imprisoned in state prison. (a) Except as provided in Sections 946.4 and 946.6 and subject to subdivision (b) of this section, any suit brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be

commenced within six months after the date the claim is acted upon by the board, or is deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.

(b) When a person is unable to commence a suit on a cause of action described in subdivision (a) within the time prescribed in that subdivision because he has been sentenced to imprisonment in a state prison, the time limited for the commencement of such suit is extended to six months after the date that the civil right to commence such action is restored to such person, except that the time shall not be extended if the public entity establishes that the plaintiff failed to make a reasonable effort to commence the suit, or to obtain a restoration of his civil right to do so, before the expiration of the time prescribed in subdivision (a).

(c) A person sentenced to imprisonment in a state prison may not commence a suit on a cause of action described in subdivision (a) unless he presented a claim in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division. (Added Stats. 1963, c. 1715, p. 3383, § 2, as amended Stats. 1965. c. 653, p. 2015, § 19.)

§ 946.6 Denial of application for leave to present claim; relief from provisions of section 945.4; place of filing petition. (a) Where an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from the provisions of Section 945.4. The proper court for filing the petition is a court which would be a competent court for the trial of an action on the cause of action to which the claim relates and which is located in a county or judicial district which would be a proper place for the trial of such action, and if the petition is filed in a court which is not a proper court for the determination of the matter, the court, on motion of any party, shall transfer the proceeding to a proper court.

(b) The petiton must show (1) that application was made to the board under Section 911.4 and was denied or deemed denied, (2) the reason for failure to present the claim within the time limit specified in Section 911.2 and (3) the information required by Section 910. The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6.

(c) The court shall relieve the petitioner from the provisions of Section 945.4 if the court finds that the application to the board under Section 911.4 was made within a reasonable time not to exceed one year after

the accrual of the cause of action and was denied or deemed denied pursuant to Section 911.6 and that:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect unless the public entity establishes that it would be prejudiced if the court relieves the petitioner from the provisions of Section 945.4; or

(2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or

(3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or

(4) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

(d) A copy of the petition and a written notice of the time and place of hearing thereof shall be served not less than 10 days before the hearing on (1) the clerk or secretary or board of the local public entity, if the respondent is a local public entity, or (2) the State Board of Control or its secretary, if the respondent is the state.

(e) The court shall make an independent determination upon the petition. The determination shall be made upon the basis of the petitiin, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition.

(f) If the court makes an order relieving the petitioner from the provisions of Section 945.4, suit on the cause of action to which the claim relates must be filed in such court within 30 days thereafter. (Added Stats. 1965, c. 653, p. 2016, § 22.)

APPENDIX D

OPINION OF COURT OF APPEAL - FRIES V. COMBS.

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

CREDERICK CHRISTIAN FRIES, Plaintiff and Appellant, v. STEVEN COMBS, Defendant and Respondent.	2D CIVIL NO. 45104 (Sup. Ct. No. C 68624) FILED June 30, 1975

Frederick Fries petitioned the superior court for relief from his statutory obligation to present a claim against the City of Inglewood before suing the city for personal injuries sustained during a karate class in a city park. The city had refused Fries' claim filed 33 days after the close of the 100-day filing period. The court denied the petition for relief and also

sustained a demurrer to the complaint by another defendant, Steven Combs, a karate instructor and city employee. Fries appeals the subsequent judgments of dismissal.

THE STATUTES

The California tort claims statutes provide that a plaintiff may bring a personal injury action against a governmental entity if plaintiff presents his claim to the entity within 100 days of the accrual of his cause of action and the entity denies the claim. (Gov. Code, §§ 911.2 and 945.4.) If plaintiff does not timely file a claim, he may within a reasonable time not exceeding one year apply to the entity for leave to file a late claim. (Gov. Code, §§ 911.4 and 911.6.) If the entity denies the application to file a late claim, plaintiff within six months may petition the court for relief from the claim-filing requirement. (Gov. Code, § 946.6(a).) If the court finds plaintiff applied to file a late claim within a reasonable time from the accrual of his cause of action and that his failure to file a timely claim resulted from mistake, inadvertence, surprise, or excusable neglect, the court shall relieve plaintiff, unless it finds the public entity would be prejudiced by such relief. (Gov. Code, § 946.6(c).)

THE FACTS

Affidavits of Fries and his attorney in support of the petition state that on 24 October 1972 Fries attended a kraate class conducted by the city in a city park. The karate instructor, Combs, injured Fries' face, nose and mouth and damaged his dental appliance. Four city employees, including Combs and two persons who treated Fries' injuries, were informed of the incident on the day it occurred. On 21 February 1973 Fries filed an accident report with another city employee at the park. The next day the city clerk notified Fries that he would have to file a claim.

Uncertain of his legal rights, Fries consulted an attorney. He had "delayed consulting an attorney because of the pain of [his] injuries and the difficulty in obtaining a doctor's appointment for treatment. Also, during this period of time [he] lost [his] automobile and was without transportation." On 7 March 1973, Fries applied with the city for leave to file a late claim. The city took no action, and on 23 Arpil 1973 the application was deemed denied. On 3 October 1973 Fries filed his petition in Superior Court.

Fries first contends he complied with the spirit, if not the letter, of the claim-filing statute, when he notified city employees of the incident on the day it occurred. Formal requirements for a claim may be excused when the claimant submits a document reaily

identifiable as a claim. (Foster v. McFadden, 30 Cal.App. 3d 943, 948.) Notification of an incident, however, does not itself show an intention to seek redress, an essential element of any claim. Moreover, Fries reported the incident in the city park, not the city hall where the report might reasonably be expected to receive appropriate attention. Even if the accident report Fries filed with a park employee on 21 February 1973 could be construed as a claim, it too was not filed within the 100-day period.

Fries contends the city is estopped to raise the bar of the claim-filing statute because city employees who were told of the incident failed to advise him to file a claim. Estoppel may be allowed where a claimant has been misled by governmental agents with respect to procedural requirements of the claims statute. (McLaughlin v. Superior Court, 29 Cal.App. 3d 35, 40.) But we know no requirement that governmental agents, particularly those not shown to have legal or claims-related duties, must take affirmative action to inform a potential claimant of claim-filing requirements. Fries could not reasonably expect a karate instructor to advise him of his rights and duties incident to a potential tort claim.

Fries next contends he made a sufficient showing of mistake, inadvertence, surprise, or excusable neglect to warrant relief from the claim-filing statutes.

Although discretion to grant or deny relief under the tort claims statutes lies in the trial court, we must review the denial of relief in the light of the remedial purpose of the statute and the modern trend of judicial decision that resolves doubts in favor of relief unless forbidden by statute. (County of Santa Clara v. Superior Court, 4 Cal.3d 545, 552; Viles v. State of California, 66 Cal.2d 24, 28-29.) That examination persuades us the trial court did not abuse its discretion in denying relief. The basis of Fries' petition for relief was his ignorance of the 100-day claim-filing limitation, a basis that does not legally justify delay. (See Tammen v. County of San Diego, 66 Cal.2d 468, 476.) Nor do his affidavits establish a causal relationship between his injuries and his failure to seek prompt formal redress of his claim.

Finally, Fries contends the claim-filing statute violates constitutional guarantees of due process and equal protection of the laws. (See Turner v. Staggs, Nev., 510 P.2d 879; Reich v. State Highway Department, 386 Mich. 617, 191 N.W.2d 700.) We reject this oft-raised argument. (Roberts v. State of California, 39 Cal.App.3d 844, 848-850.) The Supreme Court recently had this same contention before it in Whitfield v. Roth, 10 Cal.3d 874, and, although deciding the cause on a different ground, stated "that no arguments or authority have been brought to our attention which would suggest that our decision in

Tammen v. County of San Diego, supra, 66 Cal. 2d 468, 481, upholding the constitutionality of the claims statute, is no longer valid." (10 Cal.3d at 889, fn. 20.)

The judgments are affirmed.

NOT FOR PUBLICATION.

FLEMING, J.

We concur:

ROTH, P.J.

COMPTON, J.

APPENDIX E

OPINION FO COURT OF APPEAL - SIFTON V. COUNTY OF VENTURA.

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

DANIEL SIFTON, ERIC SIFTON, and LORI SIFTON, minors, by ELSIE CAROLINE SIFTON and ASHFORD DAVID SIFTON, their Guardians,	) 2d Civil No. 44073
Plaintiffs and Appellants,	)(Ventura Co. Sup. Ct. No. 53783)
vs.	) FILED June 30, 1975
COUNTY OF VENTURA,	
Defendant and Respondent.	

APPEAL from a judgment of the Superior Court of the County of Ventura entered after a demurrer to plaintiffs' second amended complaint had been sustained without leave to amend

in an action to recover damages for wrongful death. Richard C. Heaton, Judge. Judgment affirmed.

West and Girardi and Eric Lawton for Appellants.

Robert C. Haase, Jr., Bodkin, Breslin & Luddy, and Timothy J. Sargent for Respondent.

Plaintiffs, three minor children who by their guardians brought an action for the wrongful death of their parents, appeal from a judgment of dismissal entered after the demurrer of defendant County of Ventura to plaintiffs' second amended complaint was sustained without leave to amend.

The county's demurrer was sustained on the ground that the plaintiffs had failed to allege compliance with the government tort claims statutes (Gov. Code, § 911.2).1/

In their second amended complaint plaintiffs allege that they are minors and that on February 11, 1971, their parents were killed in an accident involving a Ford Mustang automobile operated and maintained by certain defendants and a Honda motorcycle owned and

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1/ All code section references will be to the Government Code unless otherwise specified.

being driven by plaintiffs' father, on which their mother was a passenger. Plaintiffs alleged that "the government entity defendants [the County of Ventura] negligently designed and maintained said roadway described above [the roadway located at the scene of the accident] as to proximately contribute to the accident."

With respect to the filing of a claim with the County of Ventura as required by section 911.2, plaintiffs alleged as follows:

"7. That a claim was filed with the government entity defendants within 100 days of the accrual of the cause of action in that defendants' agents investigated the accident on the day of the accident and that a police report was filed on or about February 22, 1971, and was a matter of public record. That said police report contained all of the information required by Section 910 of the Government Code in that it contained the names and post office address of the Siftons, the date, place and circumstances of the occurrence giving rise to the claim asserted; a general description of the injury, damage, obligation, damage and loss incurred, so far as was known at the time of the report; the area of public property causing the damage, injury and loss, and further that it showed that both decedents were killed, thus establishing the amount of damage caused by the government entity defendants' negligence. That all of this information gave sufficient notice to the government entity defendants of plaintiffs' claim. A copy of said

police report is attached hereto and marked 'Exhibit A' and is incorporated by reference as though fully set forth herein. That said claim has been denied by operation of law.

"8. That a claim was filed by defendant and cross-complainant CURTIS PODRATZ on or about May 21, 1971, with the County Clerk of the County of Ventura. That said claim alleged the same circumstances and facts which are alleged by plaintiffs in this Second Amended Complaint, namely, damages sustained as a proximate result of the negligent design and maintenance of county property. That the Government entity defendants thereby had notice of the facts and circumstances of the incident alleged in this complaint, and had a further opportunity to investigate said incident. That said claim has been denied by operation of law.

"9. That a claim was filed with the Government entity defendants in that defendants agents, the County Coroner of the County of Ventura, made a complete investigation of the circumstances alleged in this complaint on the day of the incident and that a Coroner's Report, Coroner's Register, Summary of investigation, and autopsy report were all filed with the County of Ventura on or about February 12, 1971. That said report contained all of the essential information required by the Government Code, giving the Government entity defendants full and complete notice of the circumstances alleged in this complaint. A copy of said Summary of

Investigation is attached herewith and marked 'Exhibit B' and is incorporated as though fully set forth herein. That said claim was denied by operation of law.

"10. That a complaint was filed within the time allowed following the denial of said claims."

The County of Ventura (hereafter County) demurred to plaintiffs' second amended complaint "on the ground that it fails to state a cause of action." As will be explained, the trial court properly sustained the County's demurrer "on all grounds stated without leave to amend." (Veriddo v. Renaud, 35 Cal.2d 263, 265; C.A. Magistretti Co. v. Merced Irrigation Dist., 27 Cal.App.3d 270, 274-275.)

Plaintiffs do not allege that they personally filed a claim with the County within 100 days of the accrual of the cause of action or that any attempt was made by them to file a late claim pursuant to section 911.4. Plaintiffs' attorney of record, in a declaration filed in this action on October 12, 1973, stated that "the plaintiffs did not comply with the formal requirements of the Government claim statutes." statutes."[2/]

2/ The court may take judicial notice of its own file and matters as to which the court may take judicial notice may render a complaint defective. (Code Civ.Proc., §430.30; Able v. Van Der Zee, 256 Cal.App.2d 728, 734.)

By their complaint plaintiffs seek to rely on a theory of substantial compliance with the government claims statutes by alleging that (1) a police report was filed with respect to the accident which took plaintiffs' parents' lives; (2) defendant Curtis Podratz, the driver of the Ford Mustang involved in the accident, filed a claim with the County on May 21, 1971; and (3) the coroner of Ventura County investigated the accident and a coroner's report, coroner's register, summary of investigation and autopsy report were filed with the County on or about February 12, 1971. On this appeal plaintiffs contend that "the substance of the requirements of the government claim provisions (Govt. Code § 900, et seq) were satisfied in this case." Plaintiffs also contend that "[t]he time for filing . . . [plaintiffs'] claim is tolled during their minority," and that the government claim statutes are "unconstitutional as violative of the due process and equal protection guarantees of the California and U.S. Constitutions."

Section 911.2 provides in pertinent part that a "claim relating to a cause of action for death . . . to person . . . shall be presented . . . not later than the 100th day after the accrual of the cause of action." The requirements of section 911.2 are ameliorated by section 911.4 which provides that where a person has failed to file a claim within the time allowed by section 911.2 he may apply to the applicable government entity for leave to file such a claim "within a reasonable time not to exceed one year after the accrual of the cause

of action." As to minors such as plaintiffs herein, section 911.6 makes it mandatory that the government agency grant an application for leave to file a late claim made pursuant to section 911.4 where the person who sustained the damage or loss "was a minor during all of the time specified in Section 911.2 for the presentation of the claim." Furthermore, where an application for leave to file a claim pursuant to serction 911.4 has been denied, the claimant may seek relief from the superior court pursuant to section 946.6 by petition filed within six months after the application to file a claim has been denied.

In the instant case plaintiffs neither filed a claim pursuant to section 911.2 or an application for leave to file a late claim pursuant to section 911.4, nor petitioned the superior court for relief pursuant to section 946.6. In Ridley v. City etc. of San Francisco, 272 Cal.App.2d 290, the plaintiff minors filed suit against the City and County of San Francisco alleging assault, battery, false arrest and imprisonment by police officers. A summary judgment in favor of defendants was granted when it was revealed that the plaintiffs had filed claims after the 100-day period required by section 911.2 and had failed to file an application for leave to present claims as provided for in Section 911.4. In affirming the judgment, the appellate court stated (272 Cal.App.2d at pp. 292-293): "The 100-day requirement applies to actions for false arrest and imprisonment; and a claim filed late is to be disregarded,

unless the statutory methods of relief are employed. [Citation.]

"When a claim is not filed within that period, application may be made to the public entity for leave to present the claim 'within a reasonable time not to exceed one year.' (Gov. Code, § 911.4.) If such an application is made by a minor, in the absence, at least, of special circumstances, it must be granted. [Citations.] But no such application was made. No reason has been assigned to excuse the failure to file such a claim, nor the failure to apply for such relief; except the postulate that if they had filed, relief was a matter of right, and therefore they did not have to file at all.

"Without a proper filing, and rejection of the claims, no right accrues to seek relief in the courts. . . .

"As indicated above, the filing of a proper claim is a condition precedent to suit. The filing of the lawsuit cannot serve as the condition precedent to its own filing. [Citations.]" (See Billups v. Tiernan, 11 Cal. App.3d 372, 378-379; Los Angeles City Sch. Dist. v. Superior Court, 9 Cal.App.3d 459, 465.)

Plaintiffs contend, however, that the purposes of the claims statutes have been served by the filing of the aforementioned police report, coroner's reports and the claim of defendant Podratz. Sections 910 and 910.2

provide that a claim shall be presented and signed by the claimant or by a person acting "on his behalf." It is clear that the police, the county coroner and defendant Podratz were not persons acting on behalf of plaintiffs. In Roberts v. State of California, 39 Cal.App.3d 844, decedent's wife and children failed to timely file a claim with the state. The trial court granted the petition to file a late claim as to the minor children but denied the petition as to the adult widow. On appeal, the widow contended inter alia "that the intent of the statutes requiring timely notice to be given to the state of a claim against it was fulfilled as to her by the timely notice of claim filed by and on behalf of the decedent's workmen's compensation carrier and his employer." (39 Cal. App.3d at p. 846.) In affirming the judgment, the appellate court stated (39 Cal.App.3d at pp. 847-848): "As to timely filing of claim by the insurance carrier and employer, it is the essence of Mrs. Roberts' argument that the underlying purpose of government claim filing requirements as a prerequisite to litigation are (a) the government entity should have an opportunity to investigate promptly while the evidence and witnesses are available; and (b) the entity, having obtained full information should have an opportunity to settle all other meritorious claims without litigation. (Cf., Viles v. State of California, supra, 66 Cal.2d 32.) If we accept her analysis of the purposes of the statutes involved, it does not follow that the filing of a claim by an insurance carrier and an employer would 'satisfy' such purposes as to Mrs. Roberts,

as she would have us hold. The fact that the state has been put on notice that a workmen's compensation carrier and an employer may sue it alerts the state to possible liability under the Labor Code. But that exposure is different in kind and nature from exposure to a wrongful death action by a wife with all the attendant possibilities of complex litigation and the possibility of extremely high damages if liability is established. The contention overlooks the fact that one of the purposes of the claims statute is to provide opportunity for orderly fiscal planning by advance knowledge of potential claims and to provide opportunity for the entity to rectify promptly a condition that resulted in injury and so prevent further losses. (Cf., 2 Cal.Law Revision Com., Rep. (1959) pp. A-73--A-75; 4 ibid. (1963) pp. 1008-1009.)

"Moreover, while distinguishable on their facts, there are cases which are sufficiently analogous which hold that filing of a claim by one party with respect to a particular prospective cause against a public entity does not serve to relieve another prospective party from so doing. (See, e.g., Petersen v. City of Vallejo (1968) 259 Cal.App.2d 757, 766-768 [66 Cal.Rptr. 776]; Bozaich v. State of California (1973) 32 Cal.App.3d 688, 696-697 [108 Cal.Rptr. 392].) We hold that the trial court did not err under statutory and case law in denying Mrs. Roberts' petition to file a late claim."

In Lewis v. City and County of San Francisco, 21 Cal.App.3d 339, Mrs. Lewis

was injured in a municipal bus accident. Although she filed a claim for damages for her injuries within 100 days of the accident, she died, allegedly as a result of her injuries, 33 months after the accident. No claim for damages for wrongful death was filed with the city and county on behalf of Mrs. Lewis' surviving husband and daughter. When the husband and daughter filed a wrongful death suit, the city and county's demurrer was sustained on the ground that no claim for wrongful death had been filed. In affirming the judgment of dismissal, the appellate court stated as follows (21 Cal.App.3d at p. 341): "Appellants also argue that Mrs. Lewis' filing of her claim for damages for personal injuries put the city fully upon notice, and permitted prompt investigation. Thus, it is argued, the claims requirement was substantially met. But the rule of substantial compliance has been applied only when some claim, even though technically defective, is filed (McGranahan v. Rio Vista etc. Sch. Dist., 224 Cal.App.2d 624, 629 [36 Cal.Rptr. 798]).

"The filing of a wrongful death claim by one heir for herself alone, even though it similarly gives the public body full opportunity to investigate, does not excuse absence of a claim by another heir (Petersen v. City of Vallejo, 259 Cal.App.2d 757, 766-767 [66 Cal.Rptr. 776]). Mere knowledge by the public body of the accident and of the proposed claim is not sufficient (Redwood v. State of California, 177 Cal.App.2d 501, 504 [2 Cal.Rptr. 174] and cases there cited).

"An action for wrongful death is wholly distinct from an action by the decedent, in his lifetime, for the injuries which ultimately cause his death (Marks v. Reissinger, 35 Cal. App. 44, 50-55 [169 P. 243]) . . . . Para. . . . we conclude that, under the authorities, Mrs. Lewis' claim for damages for personal injuries cannot be deemed substantial compliance by her heirs with the claims statute, so as to support this wrongful death action by them."

In the instant case, the coroner's reports and the police report did not give the County notice of plaintiffs' claim. Defendant Podratz' claim for personal injuries and property damage did not give the County notice of plaintiffs' existence, let alone the extent or nature of the damage sustained by plaintiffs.

Plaintiffs filed suit against the County on August 18, 1971, well within one year after the accident. However, section 945.4 bars the maintenance of a suit against a public entity on a cause of action for which a claim is required to be presented pursuant to section 900 et seq. and section 910 et seq. until a written claim has been presented to the public entity and it has either acted upon the claim or the claim has been deemed to have been rejected.

In Stromberg, Inc. v. L.A. County Flood etc. Dist., 270 Cal.App.2d 759, the court held that filing a complaint against a public entity did not constitute the filing of a claim under the government claims statutes, stating therein as

follows (270 Cal.App.2d at pp. 762-763): "The doctrine of substantial compliance has frequently been invoked to validate a claim in fact filed under the claims statute, although incomplete or defective or presented to the wrong agency, where claimant has made a bona fide attempt to comply with the statutory requirements [citations] but we know of no case in which it has been invoked to cure an omission to file a claim. The doctrine of substantial compliance cannot be predicated on a complete failure to comply with the mandates of the claims statute."

Plaintiffs' reliance on Los Angeles City Sch. Dist. v. Superior Court, supra, 9 Cal. App.3d 459, is misplaced. In that case the plaintiff, a minor, sustained injuries on June 3, 1966, while on the premises of San Fernando Valley State College. No claim was filed by plaintiff within the 100-day period following the injury. However, within one year of the injury plaintiff applied to the public entity defendants for leave to present a late claim, which defendants denied. On December 23, 1969, more than three years after the denial of plaintiff's application for leave to present a late claim, plaintiff filed a petition for relief from the provisions of section 945.4 pursuant to section 946.6. Section 946.6 provides that such a petition "shall be filed within six months" after the application to the public entity for leave to file a late claim pursuant to section 911.4 is denied. Accordingly, the issue presented in Los Angeles City Sch. Dist. v. Superior Court, supra, was whether, based on plaintiff's status

as a minor, the superior court had jurisdiction to grant plaintiff's petition for relief where the petition had been filed more than six months af after plaintiff's application for leave to present a late claim had been denied. The appellate Court concluded that the six-month period contained in section 946.6 was tolled during plaintiff's minority by the operation of Code of Civil Procedure section 352 and that, therefore, his petition was timely. (9 Cal.App.3d at p. 463.)

However, in the case presently before this court plaintiffs not only failed to file a claim pursuant to section 911.2 and an application for leave to file a late claim pursuant to section 911.4, but they also did not petition the superior court for relief from the provisions of section 945.4 pursuant to section 946.6. The court in Los Angeles City Sch. Dist. v. Superior Court, supra, emphasized the necessity for compliance with the claims statute before application for relief may be made to the court, stating (9 Cal.App.3d at p. 465): "Plaintiff does not dispute that section 946.6 can only be asserted by a minor, who can satisfy the court that he has complied with those sections dealing with the presentment of claims. (Gov.Code, §§ 910, 911.2, 911.4 and 911.6.) Our courts have so held. Williams v. Los Angeles Met. Transit Authority, supra; Ridley v. City & County of San Francisco (1969) 272 Cal.App.2d 290 [77 Cal.Rptr. 199]; Artukovich v. Astendorf (1942) 21 Cal.2d 329 [131 P.2d 831].)"

Plaintiffs next contend that "[t]he time for filing . . . [plaintiffs'] claim is tolled during their minority." Plaintiffs have cited no cases and we have found none upholding that proposition. Williams v. Los Angeles Met. Transit Authority, 68 Cal. 2d 599, upon which plaintiffs seek to rely, did hold that Code of Civil Procedure section 352 tolls the statute of limitations with respect to a suit by a minor against a public entity provided the minor has complied with applicable claims procedures. Thus, the Supreme Court stated as follows (68 Cal. 2d at pp. 604-6050: "Although defendant relies on Artukovich v. Astendorf (1942) 21 Cal. 2d 329 [131 P. 2d 831] that case does not apply to the situation before us. There the plaintiff contended that his minority excused him from the requirement of former Political Code Section 4075, which provided that an injured party file a claim before bringing suit against a public entity. Noting that the statute did not explicitly excuse minors from compliance with the claims procedures, we held: 'Thus there are statutory provisions extending special consideration to minors with respect to the time within which certain proceedings must be commenced ([e.g.,] Code Civ. Proc., § . . . 352 . . .) but the special consideration extended is expressly limited to the proceedings therein mentioned. We find no similar provisions extending special consideration to minors in statutes prescribing the time within which claims must be filed . . . .'

(21 Cal. 2d at pp. 333-334.)"[3/] And in Moyer v. Hook, 10 Cal. App. 3d 491, at page 493, the court stated: "The code section relied upon by appellant (Code Civ. Proc., § 352) tolls, during certain disabilities, only the running of the period for filing 'an action.' It does not apply to the filing of a claim against a public entity (Artukovich v. Astendorf, 21 Cal. 2d 329 [131 P. 2d 831]). It is quite true that an 'action against a public entity . . . for which a claim is required to be presented' (Code Civ. Proc., § 342) is 'mentioned' in chapter three of that code, and thus is subject to section 352 (Williams v. Los Angeles Met. Transit Authority, 68 Cal. 2d 599, 602 [68 Cal. Rptr. 297, 440 P. 2d 497]). But Williams deals only with the 'action' which must be commenced within a limited time after rejection of a claim which itself was timely (Gov. Code, § 945.6). The Williams claim was timely filed (1. 601). Williams does not extend the time for filing a claim, but only

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3/ As noted hereinabove, while the court in Los Angeles City Sch. Dist. v. Superior Court, supra, 9 Cal. App. 3d 459, held that Code of Civil Procedure section 352 operated to toll the six-month period contained in section 946.6 during a plaintiff's minority, the court also stated that nothing in that section abrogated the necessity for a minor's compliance with applicable claims statutes prior to seeking relief in the court.

that for commencement of an action by the filing of the complaint. The decision does not disapprove Artukovich, but specifically recognizes its rule. The distinction between action and claim is emphasized by the statement (p. 608) that '[b]ecause plaintiff must timely comply with the claims procedures (Artukovich v. Astendorf, supra, 21 Cal. 2d 329) the public entity will be afforded the opportunity to investigate promptly the minor's claim. . . .' If there be anomaly in tolling of only the statute of limitations and not the running of the time to file claim, the concurring opinion in Williams makes clear that it was considered by the court in its holding. [Fn. omitted.]"

Finally, it should be noted that in 1970 the Legislature amended Code of Civil Procedure section 352 by adding subsection (b) thereto (Stats. 1970, ch. 104, p. 323, § 1) which amendment became operative on January 1, 1971, prior to the accrual of plaintiffs' cause of action alleged herein. As amended, Code of Civil Procedure section 352 provides in pertinent part as follows: "(a) If a person entitled to bring an action, mentioned in chapter three of this title, be, at the time the cause of action accrued . . . 1. Under the age of minority . . . the time of such disability is not a part of the time limited for the commencement of the action.

"(b) This section does not apply to an action against a public entity or public employee upon a cause of action for which a claim is

required to be presented in accordance with Chapter 1 (commencing with Section 900) or Chapter 2 (commencing with Section 910) of Part 3, or Chapter 3 (commencing with Section 950) of Part 4, of Division 3.6 of Title 1 of the Government Code. This subdivision shall not apply to any claim presented to a public entity prior to January 1, 1971."4/

4/ The Law Revision Commission's comment on the 1970 amendment to Code of Civil Procedure action 352 makes clear that by virtue of the amendment the statute of limitations with respect to suits against a public agency for which a claim must be filed is no longer tolled during the claimant's minority. The comment is as follows: "Subdivision (b) has been added so that Section 352, which operates to toll the statute of limitations for minors, insane persons, and prisoners, will not apply to the causes of action against a public entity or public employee described in this subdivision. Such actions are governed by the period of limitations specified in subdivision (a) of Section 945.6 of the Government Code. To safeguard the minor or incompetent from an inadvertent reliance on the tolling provision of Section 352, notice of rejection of his claim in the form provided in Government Code Section 913 is required to be given by the public entity. If notice is not given the claimant has two years from the accrual of his cause of action in which to sue. See Government Code Section 945.6(a)."

Under the cases noted hereinabove the time during which a person must file a claim against a government agency has never been tolled during a claimant's minority. By virtue of the 1970 amendment to Code of Civil Procedure section 352 the time within which a person may bring an action against a public agency after having properly filed a claim with that agency is no longer tolled during the claimant's minority. 5/

5/

Plaintiffs herein rely on Wozniak v. Peninsula Hospital, 1 Cal.App. 3d 716, and Whitfield v. Roth, 10 Cal. 3d 874, claiming that courts "in fact, have tolled the period for filing of government claims for minors in certain situations." Each of those cases involved a minor's claim for medical malpractice against a public entity. The issue in each case was the date of the accrual of the cause of action, which in malpractice cases is the date of discovery of the injury and its negligent cause. The date of the accrual of the cause of action is, of course, crucial in determining when a claim must be filed with the involved public entity. However, each of the cases acknowledged that a minor is bound by the claims statutes. (Wozniak v. Peninsula Hospital, supra, 1 Cal.App. 3d 716, at p. 723; Whitfield v. Roth, supra, 10 Cal. 3d 874, at p. 883.)

Plaintiffs argue that "[t]he California notice of claim statutes (Government Code § 900 et seq.) are unconstitutional as violative of the due process and equal protection guarantees of the California and U.S. Constitutions." In Hom v. Chico Unified Sch. Dist., 254 Cal. App. 2d 335, the court addressed itself to the question of whether the government tort claims statutes are unconstitutional as applied to minors. In holding the statutory scheme to be constitutional, the court stated (254 Cal.App. 2d at pp. 338-339): "The Muskopf [Muskopf v. Corning Hospital Dist., 55 Cal. 2d 211] decision established no doctrine depriving the Legislature of procedural control in granting and withholding consent to suit. (Thelander v. Superior Court, 58 Cal. 2d 811, 814 [26 Cal.Rptr. 643, 376 P. 2d 571]; Flournoy v. State of California, 230 Cal.App. 2d 520, 525 [41 Cal.Rptr. 190].) The legislature may constitutionally alter, modify or eliminate common law rules governing public as well as private tort liability, subject only to constitutional restrictions against arbitrary classification. (Flournoy v. State of California, supra, 230 Cal.App. 2d at p. 524.) The procedurally favored position in which claims statutes place public entities is not unconstitutionally discriminatory. (Dias v. Eden Township Hospital Dist., 57 Cal. 2d 502, 504 [20 Cal. Rptr. 630, 370 P. 2d 334].) On the assumption that the disabilities and handicaps which occasionally characterize minors should evoke legislation ameliorating the position of minors, the Legislature has supplied that amelioration.

"Minors and adults are equally subject to the 100-day limitation on the presentation of personal injury claims. (Gov. Code, § 911.2.) Presentation and rejection of a claim is a prerequisite to suit, whether by a minor or adult. (§ 945.4.) Both minors and adults may escape the 100-day limitation by applying to the entity for leave to present a late claim, the application to be made within a reasonable time, not to exceed one year after the accrual of the cause of action. (§ 911.4.) From that point onward, the minor receives more favored statutory treatment. An adult who was not physically or mentally incapacitated during the 100-day period, must show that his failure to act within that period was occasioned by mistake, inadvertence, surprise or excusable neglect and that the public entity was not prejudiced; while the minor need show only that he was a minor during the 100-day claim period. (§ 911.6.) The same distinction in treatment appears in the statute providing for judicial permission for late claim filing. (Present § 946.6; former § 912, repealed in 1965; see Church v. County of Humboldt, 248 Cal.App.2d 855, 857 [57 Cal.Rptr. 79].)

"In effect, Government Code sections 911.6 and 946.6 grant minors a period of claim filing consisting of 100 days plus a reasonable time, not exceeding one year, for filing an application for relief. If, within the extended period fixed by section 911.4, the minor files an application, relief is mandatory. (Tammen v. County of San Diego, 66 Cal.2d 468, 479-480

[58 Cal.Rptr. 249, 426 P.2d 753].) Thus the legislature has established a classification supplying more lenient claim filing conditions for minors and compensating for the disadvantages which sometimes -- but not always -- characterize minority status. (See Tammen v. County of San Diego, supra, at pp. 479-480; Frost v. State of California, 247 Cal.App.2d 378, 387 [55 Cal.Rptr. 652].)"

In Tammen v. County of San Diego, 66 Cal.2d 468, the Supreme Court stated at page 481: "Does the statutory requirement for presenting claims to a public entity before suit may be brought violate the constitutional guarantees of due process and equal protection of the laws? No. In Dias v. Eden Township Hospital Dist., supra, 57 Cal.2d 502, 504, we said: 'Public agencies, generally speaking, afford a proper subject for legislative classification.' These constitutional arguments were also rejected in Wadley v. County of Los Angeles, 205 Cal.App.2d 668, 672-673 [23 Cal.Rptr. 154]." (See Bozaich v. State of California, 32 Cal.App.3d 688, 699; Lewis v. City and County of San Francisco, supra, 21 Cal.App.3d 339, 340-341.)

Plaintiffs rely primarily upon cases decided by the Michigan and Nevada Supreme Courts in support of their position. (Reich v. State Highway Department, 386 Mich. 617, 194 N.W.2d 700; Turner v. Staggs, 89 Nev. 230, 510 P.2d 879.) Those cases were analyzed by the court in Roberts v. State of California, supra, 39 Cal.App.3d 844, at pages 848-850, wherein

the court stated as follows: "The contention that the claims statutes violate the equal protection of laws provisions of the United States Constitution rests upon the assertion that by barring a lawsuit to a person who has not first filed a claim with a public entity within 100 days, while such a provision does not exist as a bar to other prospective defendants, an arbitrary or special class of wrongdoers has been established. It is argued that the California Legislature had intended, by its enactments permitting public entities to be sued, to place them on the same footing as private tortfeasors and that the 100-day limitation is an unreasonable classification and defeats the legislative intention. It is claimed that the 100-day notice requirement is a special statute of limitations arbitrarily barring actions by victims of governmental negligence while the victims of private negligence have one year in which to bring their actions. (Code Civ. Proc., § 340.) Plaintiff's counsel relies upon cases in Nevada and Michigan in which it has been held that since legislation in those states had the principal goal of putting public entities on an 'equal footing' with private tortfeasors, any different treatment was an unreasonable classification. (Turner v. Staggs (1973) 89 Nev. 230 [510 P.2d 879]; Reich v. State Highway Department (1972) 386 Mich. 617 [194 N.W.2d 700]; cf., Krause v. State (1971) 28 Ohio App.2d 1 [57 Ohio Ops.2d 1, 274 N.E. 2d 321].)

"There is a basic distinction, however, between statutes that aim at placing or actually

do place the state or other public entities on an equal basis with private tortfeasors and our California statutes.

"Our statutes were enacted after the decision of the California Supreme Court in Muskopf v. Corning Hospital Dist. (1961) 55 Cal.2d 211 [11 Cal.Rptr. 89, 359 P.2d 457] which held that common law governmental immunity must be discarded and indicated a disposition to treat all tortfeasors, public and private, alike insofar as basic liability was concerned. The legislative response to Muskopf achieved a result entirely different from that which plaintiff urges should have been effected. It enacted a series of statutes to provide, in effect, that there is governmental immunity except for the very specific areas in which the statutes allowed suits. (See, Gov. Code, § 815; Nestle v. City of Santa Monica (1972) 6 Cal.3d 920, 931-932 [101 Cal.Rptr. 568, 496 P.2d 480].) Since the enactment of the statutes in question, courts have uniformly upheld them against constitutional attack and particularly against a classification challenge. (Tammen v. County of San Diego, supra, 66 Cal.2d 481; see also, Bozaich v. State of California, supra, 32 Cal.App.3d p. 699; Hom v. Chico Unified Sch. Dist. (1967) 254 Cal.App. §d 335, 338 [61 Cal.Rptr. 920].)

"The argument in plaintiff's closing brief that 'when the state undertakes to divest itself from the cloak of immunity it must stand on an equal basis with other similarly situated

tortfeasors' would have merit only if the California Legislature so provided, or if some legislative action indicated that the reasons for the claims statute no longer had compelling force. But it did not. The fact that other states moved in that direction is irrelevant. We are in agreement with the decisions just cited upholding the constitutionality of the time limitation provisions of the claims statutes involved herein."

The judgment of dismissal is affirmed.

FORD, P.J.

We concur:

ALLPORT, J.

POTTER, J.

Service of the within and receipt of a copy thereof is hereby admitted this ..... day of February, A.D. 1976.

Supreme Court, U. S.
FILED
FEB 20 1976
S. HARRIS, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1975
No. 75-1031

DANIEL SIFTON, ERIC SIFTON and LORI SIFTON, minors, by ELSIE CAROLINE SIFTON and ASHFORD DAVID SIFTON, their guardians,

Petitioners,

vs.

RICHARD THOMAS MURPHY; CURTIS PODRATZ; and DOES 1 through 20, Inclusive,

Respondents.

FREDERICK CHRISTIAN FRIES,

Petitioner,

vs.

CITY OF INGLEWOOD, STEVE COMBS, CHUCK NORRIS KARATE STUDIOS, INC., DOES 1 through 20, Inclusive,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI.

HENRY G. BODKIN, JR.,
4201 Wilshire Boulevard, Suite 400,
Los Angeles, Calif. 90010,
Attorney for Respondent Ventura County.

TIMOTHY J. SARGENT and
JOHN B. GOLPER,
BODKIN, McCARTHY, SARGENT & SMITH,
4201 Wilshire Boulevard, Suite 400,
Los Angeles, Calif. 90010,
Of Counsel.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

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IN THE

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October Term, 1975
No. 75-1031

DANIEL SIFTON, ERIC SIFTON and LORI SIFTON, minors, by ELSIE CAROLINE SIFTON and ASHFORD DAVID SIFTON, their guardians,

Petitioners,

vs.

RICHARD THOMAS MURPHY; CURTIS PODRATZ; and DOES 1 through 20, Inclusive,

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FREDERICK CHRISTIAN FRIES,

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vs.

CITY OF INGLEWOOD, STEVE COMBS, CHUCK NORRIS KARATE STUDIOS, INC., DOES 1 through 20, Inclusive,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI.

A Summary Statement of the Respondent's Contentions.

Sifton v. County of Ventura is an action brought by minor plaintiffs for the alleged wrongful death of their parents.

The plaintiffs were dismissed, by way of demurrer for failure to comply with the claims provisions of the California Government Tort Claims Act (California Government Code §900, *et seq.*).

The claims provisions of the California Government Code §900, *et seq.* (hereinafter all code sections will refer to the California Government Code unless otherwise stated) require that a claim against a local public entity be presented to it (§905) not later than 100 days after the accrual of the cause of action (§911.2). However, the claimant may still apply for leave to file a late claim (§911.4(a)) but the application is to be presented within one year of the date of the accrual of the cause of action (§911.4(b)). The time where a minor is without a guardian is not to be counted. The Claims Board is to grant the application if the claimant was a minor during the 100-day period (§911.6(b)(2)). A lawsuit cannot be brought until a claim therefor has been presented (§954.4) and a claimant may petition an appropriate court for relief from that action but only if the application for late claim was made within the one-year period (§946.6(c)).

The California Legislature has enacted these claims provisions as a modification of the common law rules concerning sovereign immunity. In doing so, it has set up a very comprehensive statutory scheme which allows certain safeguards to protect those whom, with valid reasons, have not filed their claims within a normal period. The claims provisions give minors a special status when filing a claim but still require minors to file a claim or at least an application to file a late claim within one year from the date of the wrong complained of.

The California Legislature, in modifying the common law rules of sovereign immunity, intended for each person who had a claim to file the claim against

the governmental entity so that the entity might act on the claim before needless costs of litigation were incurred, so that the governmental entity might provide for such claim in its fiscal budget and to give the entity prompt notification in order that the condition or practices giving rise to the claim may be expeditiously corrected.

Plaintiffs neither filed a claim against Ventura County nor did they apply for leave to file a late claim. Instead, plaintiffs sued Ventura County contrary to requirements that a claim be filed before suit.

The principle of sovereign immunity has throughout the history of this country been recognized. It has been recognized and approved by the United States Supreme Court for ages. Each of the fifty states of this country is sovereign in its own right. Consent by each sovereign state will alone enable the state to be sued. The California Constitution gives the California Legislature the power to provide a means by which valid claims may be made, and sued upon, against the State of California or its political subdivisions such as Respondent Ventura County. The California Government Tort Claims Act is the comprehensive statutory response by the Legislature to this constitutional mandate.

The California Government Tort Claims Act has long been upheld by the California courts as constitutional in that the State of California and its political subdivisions are a proper subject for legislative classification when the issue is immunity from suits against the same. Indeed, the California courts have never construed the California Government Tort Claims Act as a *total* waiver of sovereign immunity so as to

put governmental entities on an equal footing with private entities with regard to suits thereon.

Three other state high courts have stricken down their respective states' statutory schemes on sovereign immunity as being violative of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution (Washington: *Jenkins v. State* 85 Wash.2d 883, 540 P.2d 1363 (1975) and *Hunter v. North Mason High School* 85 Wash.2d 810, 539 P.2d 845 (1975); Nevada: *Turner v. Staggs* 89 Nev. 230, 510 P.2d 879 (1973) cert. den. *sub. nom. Clark County v. Turner* 414 U.S. 1079, 94 S.Ct. 598, 38 L.Ed.2d 486 (1973); Michigan: *Reich v. State Highway Dept.* 386 Mich. 617, 194 N.W.2d 700 (1972)). But each of these three states' legislatures had intended to waive sovereign immunity so that private and public entities were to be liable to suit on a *completely equal* footing. That was the reason the highest courts of those three states struck down their respective government claims statutes as being unconstitutional.

Because there is such a distinct difference in the intendment of the California Government Tort Claims Act (*i.e.*, not to put governmental and private entities on a totally equal footing with regards to suit thereon) and the intendment of the tort claims statutes of Washington, Nevada, and Michigan (*i.e.*, to put governmental and private entities on a completely equal footing), there is no real conflict in the opinions of the California, Washington, Nevada, and Michigan Supreme Courts so as to warrant a writ of certiorari from this Court. Each State Supreme Court has issued an opinion which is adequate on state grounds and there is no need

for review by the United States Supreme Court. Respondent Ventura County therefore respectfully requests that this Court deny the instant petition for writ of certiorari.

Response to the Petition for Writ of Certiorari.

Respondent Ventura County prays that no writ of certiorari issue to review the judgment herein of the California Supreme Court entered in the instant case on October 23, 1975.

Opinion Below.

On December 28, 1973 the Superior Court of the State of California, for the County of Ventura, sustained without leave to amend Respondent Ventura County's demurrer to Petitioners' second amended complaint (for wrongful death) on the grounds that Petitioners had failed to allege that they had filed a claim with Ventura County before filing suit in accordance with the requirements of the California Government Tort Claims Act and that the statute of limitations had run. Judgment of Dismissal as to Respondent Ventura County was filed and entered on January 8, 1974 [C.T. 201] and Notice of Entry of Judgment was filed on January 9, 1974 [C.T. 203].

Petitioners filed their Notice of Appeal on January 25, 1974 [C.T. 204]. The Court of Appeal, Second Appellate District, State of California, in an unpublished opinion, *Sifton v. County of Ventura*, 2d Civil No. 44073 (Court of Appeal, filed June 30, 1975) (Petitioners' Appendix E), affirmed the judgment of dismissal by the Superior Court.

Petitioners' request for hearing in the Supreme Court of the State of California was summarily denied on

October 23, 1975. *Sifton v. County of Ventura,* 2d Civil No. 44073 (October 23, 1975) (Petitioners' Appendix A).

Jurisdiction.

The denial of the petition for hearing before the California Supreme Court was duly entered on October 23, 1975. The United States Supreme Court has jurisdiction to review the instant Petition under 28 U.S.C. §1257(3).

Constitutional Provisions and Statutes Involved.

United States Constitution.

Fourteenth Amendment, Section 1.

". . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

California Constitution.

Article II, Section 12.

"The Legislature may proscribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents or employees."

Article III, Section 5.

"Suits may be brought against the state in such manner and in such courts as shall be directed by law."

California Statutes.

California Government Code §§905, 910, 911.2, 911.4, 915, 945.4 and 945.6 are set out in full in Appendix C to Petition for Writ of Certiorari. California Government Code Section 911.6 (not set out in Appendix to the Petition) provides:

Grant or Denial of Application by Board. (a) The board shall grant or deny the application within 45 days after it is presented to the board. If the board does not act upon the application within 45 days after the application is presented, the application shall be deemed to have been denied on the 45th day.

(b) The board shall grant the application where:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced by the failure to present the claim within the time specified in Section 911.2; or

(2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or

(3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or

(4) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

Questions Presented.

I

Whether a state, by reason of its sovereign immunity, can be sued where it has not consented to be sued.

II

Whether a sovereign state's comprehensive statutory scheme for providing suits against the state or its political subdivisions which is intended to provide a different procedural mode for suit against the state governmental entities than the procedural mode for suit against private entities is violative of the due process and equal protection clauses of the United States Constitution.

Statement of the Case.

Respondent Ventura County does not object to Petitioner's Statement of the Case (Petition, pp. 9-12) with the exception of a few facts which will be set out hereinbelow to keep the record straight.

(1) The date of the accident was February 11, 1971.

(2) Petitioners filed their suit against Murphy, Podratz, and Does 1 through 20 on July 27, 1971.

(3) Respondent's Demurrer to defendant Podratz's cross-complaint was sustained without leave to amend on August 31, 1973 for failure to bring suit within six months after the Podratz claim was denied by Ventura County (Government Code §945.6(a)(1)).

(4) Respondent's Demurrer to the Petitioners' Second Amended Complaint was sustained on December 28, 1973 without leave to amend on all grounds including not only the ground of non-compliance with the claims provisions of the Government Tort Claims Act but also on the ground that the statute of limitations had run. The latter argument had been made because Petitioners' original Complaint had alleged DOE I to be the owner of the car but Respondent had been served as DOE I in the First Amended Complaint, which amounted to stating a new cause of action for which even the statute of limitations applicable in a civil suit against a non-governmental entity had run.

REASONS NOT TO GRANT A WRIT OF CERTIORARI.

I

That a State or Its Political Subdivisions Is Immune From Suit Unless Consent Thereto Has Been Given Is a Principle Long Upheld by This Court but Petitioners Are Essentially Arguing That the Principle of Sovereign Immunity Is No Longer Valid.

Petitioners argue to this Court that they have been denied their due process and equal protection rights because they are forced to comply with the set of procedural rules the State of California has established for all suits against governmental entities in California. Petitioners argue that it is unconstitutional for the State of California to promulgate a different set of procedural rules for suits against governmental entities than for suits against non-governmental entities. But such an argument is just another way of saying that the State of California cannot constitutionally assert its sovereign right to consent or not consent to suit against the State or its political subdivisions such as Respondent Ventura County. The concept of sovereign immunity is as old as this country and this Court has long recognized the validity of this principle.

Probably the most cogent statement affirming the principle of sovereign immunity is that of Chief Justice Taney in *Beers v. State of Arkansas* 61 U.S. 527, 20 How. 527, 15 L.Ed. 991 (1857). In that case, the plaintiff had brought suit against the State of

Arkansas to collect on bonds issued by the State. While plaintiff's case was pending in the State's Circuit Court, the Arkansas General Assembly, acting pursuant to the Arkansas constitutional mandate that "The General Assembly shall direct by law in what courts and in what manner suits may be commenced against the State", established certain procedures with which a person had to comply in order to bring suit. Plaintiff failed to follow such procedures and his suit was dismissed. The judgment was affirmed by the Arkansas Supreme Court. Plaintiff sought relief from the United States Supreme Court, arguing that the procedural requirements imposed by the Arkansas General Assembly were unconstitutional insofar as they constituted an impairment of the obligations of the contracts between the State and plaintiff (United States Constitution, Article I, Section 10).

To this argument, Chief Justice Taney responded:

> "It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission; but it may, if it thinks proper, waive this privilege and permit itself be made a defendant in a suit by individuals, or by another State. And as this permission is altogether voluntary on the part of the sovereignty, it follows that it may prescribe the terms and conditions in which it consents to be sued, and the manner in which the suit shall be conducted,

and withdraw its consent whenever it may suppose that justice to the public requires it."

Beers v. State of Arkansas, supra, 15 L.Ed., at 992.

In dismissing the suit for want of jurisdiction in the United States Supreme Court, the Honorable Chief Justice went on to say that the Arkansas General Assembly could modify its law at issue therein:

"if, upon experience, it was found that further provisions were necessary to protect the public interest . . . nor can this court [the United States Supreme Court] inquire whether the law operated hardly or unjustly upon the parties. . . . That was a question for the consideration of the legislature. They might have repealed the prior law altogether, and put an end to the jurisdiction of their courts in suits against the State, if they had thought proper to do so, or prescribe new conditions upon which the suits might still be allowed to proceed. . . . [I]t [the Arkansas legislature] merely regulated the proceedings in its own courts, and limited the jurisdiction it had before conferred in suits when the State consented to be a party defendant." 15 L.Ed., at 992-993.

The principle that Chief Justice Taney postulated—that a State can be sued only on its own conditions—has been reaffirmed at various times throughout the history of this Court. See, *e.g., Hans v. Louisiana* 134 U.S. 1, 10 S.Ct. 504, 33 L.Ed. 842, 845 (1890); *Palmer v. State of Ohio* 248 U.S. 32, 39 S.Ct. 16, 63 L.Ed. 108, 109 (1918); *Principality of Monaco v. State of Mississippi* 292 U.S. 313, 54 S.Ct. 745, 78 L.Ed.

1282, 1285-1286 (1934); *United States v. U.S.F. & G. Co.* 309 U.S. 506, 60 S.Ct. 653, 84 L.Ed. 894, 895-899 (1940); *Parden v. Terminal R. Co.* 377 U.S. 184, 84 S.Ct. 1207, 12 L.Ed.2d 233, 236 (1964); *Employees v. Missouri Public Health Department* 411 U.S. 279, 93 S.Ct. 1614, 36 L.Ed.2d 251, 254 (fn. 1) (1973).

The California Government Tort Claims Act is merely the response of the California Legislature to its constitutional mandate (California Constitution: Article II, Section 12 and Article III, Section 5) to devise procedures for suits against entities. See *Hayeshi v. Alameda County Flood Control & Water Conservation District* 167 Cal.App.2d 584 (1959). It is no different than the situation which was presented to this Court in *Beers v. State of Arkansas, supra,* when Chief Justice Taney ruled that the United States Supreme Court had no jurisdiction to review the Arkansas sovereign immunity statutes enacted by the Arkansas General Assembly pursuant to the mandate of the State of Arkansas Constitution.

What Petitioners are seeking in the instant case is for this Court to declare the concept of sovereign immunity to be meaningless and that the State of California has no right to set reasonable procedures under which it or its political subdivisions such as Ventura County may be sued. Considering the long-standing affirmance of the jurisprudential concept of sovereign immunity by this Court, Petitioners' argument certainly does not warrant this Court's attention and the instant Petition should be denied.

II

The California Government Tort Claims Act in Question Here Was Intended to Provide the Mechanism by Which California Governmental Entities May Investigate Claims Promptly, Negotiate Settlements Without Litigation, Prepare Proper Fiscal Planning, and Promptly Rectify Conditions and Practices Giving Rise to the Original Claim. Thus, There Is a Rational Relationship Between the Purpose of the Act and the Requirement That Claims Be Promptly Made to the Public Entity Before Bringing Suit.

Petitioners have argued that the tort claims provisions of the California Government Tort Claims Act are a "maze" of "traps and exceptions, and exceptions to the exceptions." (Petition, p. 16). Respondent Ventura County submits that all one has to do is to look at the statutory provisions complained of to recognize that they are a completely reasonable set of procedural guidelines that can easily be followed without too much difficulty.

The statutory system helps the average person present his own grievances. As with all such systems, there necessarily will be the need for a procedural plan which both the governmental entity and the claimant must follow. This can only serve to protect both parties from arbitrariness and capriciousness in the filing of claims. See generally, Van Alstyne, *California Government Tort Liability* (California Continuing Education of the Bar), §9.3, pages 414-415 (1964).

Petitioners claim that the California claim statutes are unconstitutional because they bear no rational relationship to the purpose behind their enactment to warrant a different set of procedural requirements for suits against governmental entities than the procedural requirements for suits against private entities (Petition, pp. 29, 36). In looking at the purpose behind the enactment of the claims statutes, it is incumbent upon this Court to look at the construction placed on the California statutes by California courts. *Albertson v. Millard* 345 U.S. 242, 73 S.Ct. 600, 97 L.Ed.2d 983, 985 (1953).

The California courts that have reviewed the claims provisions in question here have cited several purposes behind the enactment of these provisions. Among the purposes given constituting a legitimate state interest in the tort claims statutes are: 1) that the legislation is meant to prevent public monies from being consumed in unnecessary litigation by providing public entities an opportunity to negotiate settlements before undergoing the cost of suits and other expenses; 2) the requirement of filing claims before bringing suit permits the public entity responsible for making preparation for the fiscal year to become informed in advance as to possible future indebtedness or liability; 3) that the filing of a prompt claim gives the public entity time to investigate the merits of the claim while the evidence is still fresh, and; 4) that the public entity will have a chance to rectify and correct the conditions or practices which gave rise to the original claim. *City of San Jose v. Superior Court* 12 Cal.3d 447, 455 (1974); *Viles v. State of California* 66 Cal.2d 24 (1967); *Stanley v. City and County of San Francisco* 48 Cal.App.3d 575, 579 (1975); *Sifton v. County of Ventura*, Petitioners' Appendix E. p. E-10 (1975); *Roberts v. State of California* 39 Cal.App.

3d 844, 848 (1974); *Bozaich v. State of California* 32 Cal.App.3d 688 (1973); *Jamison v. State of California* 31 Cal.App.3d 513, 518 (1973).

It has been stated that "the rationale behind the doctrine of sovereign immunity is the protection of the state's fiscal integrity." *Jordan v. Gilligan* 500 F.2d 701, 706 (6th Cir. 1974). While that is undoubtedly true, and certainly that is one of the purposes behind the California tort claims provisions as discussed above, it should also be emphasized that public entities own and operate so many public facilities that there is good reason behind requiring a prompt claim to be made against a public entity so that the dangerous facility may be corrected quickly before other members of the public use that dangerous facility. *Cf., Stanley v. City and County of San Francisco, supra,* 48 Cal.App. 3d, at 847.

Petitioners alleged in their complaint that a dangerous road condition proximately caused the death of their parents. Certainly if this claim were true, there is a compelling public interest in having this claim be made promptly so that Ventura County could expeditiously investigate and make improvements if necessary to prevent any others from being injured while traveling on this allegedly dangerous road. If Petitioners had only to file a suit against Ventura County within the period of the statute of limitations applicable to suits against non-governmental entities (Respondent concedes that there is a longer statute of limitations in such a case), it is entirely possible the allegedly dangerous condition of the road would not come to light for years. While this may be adequate for private entities that operate facilities open to a limited group

of people, it certainly does not protect the public interest in having public facilities open to all the public operated in a constantly safe manner.

Petitioners have claimed that there is no legitimate California state interest in making suits be filed against California public entities in a different fashion than suits against non-public entities. But the discussion above adequately shows the state interest in legislation that requires a person to file a claim against the public entity before a suit can be brought (Government Code §945.6).

Notwithstanding the statement of Chief Justice Taney in *Beers v. State of Arkansas, supra,* 15 L.Ed., at 992-993 to the effect that the state may impose any conditions it wants on suits against it or its political subdivisions, one cannot help but conclude that there is good reason for the State of California to put it and its political subdivisions on a different footing than private entities with regards to suits thereon. The claims provisions of the Government Tort Claims Act were enacted for the purposes explained above. Petitioners have not shown that the claims provisions do not provide what they were intended to provide.

Moreover, the claims provisions are not unreasonably burdensome. Petitioners' suit against Respondent County was dismissed because Petitioners failed to comply with such claims procedures. Petitioners could have complied with these provisions, but did not do so. As the California District Court of Appeal found, Petitioners have offered no reason whatsoever why they did not file a claim against Ventura County (§911.2), why they failed to apply for a late claim (§911.4), or why they did not even apply to the

trial court for relief from §945.4. *Sifton v. County of Ventura,* Petitioners' Appendix E, pages E-8, E-14. The California courts require at least some compliance with the tort claims statute before a suit may be filed. See, *e.g., Los Angeles City School District v. Superior Court* 9 Cal.App.3d 459, 465 (1970); *Ridley v. City etc. of San Francisco* 272 Cal.App.2d 290, 292 (1969); *Stromberg, Inc. v. L.A. County Flood, etc. Dist.* 270 Cal.App.2d 759, 762-763 (1969). "It is a familiar principle that in an action against the sovereign, as this is in effect, all formal conditions attached to consent to suit must be performed strictly [footnote omitted]." *Poe v. Stevens* 267 F.2d 449, 450 (9th Cir. 1959). Even this Court has said that "Men must turn square corners when they deal with the government. If it attaches even purely formal conditions to its consent to be sued, those conditions must be complied with." *Rock Island, Arkansas & Louisiana Railroad Company v. U.S.* 254 U.S. 141, 41 S.Ct. 55, 65 L.Ed. 188, 189 (1920). If Petitioners had at least attempted to comply with the claims provisions, their case may arouse more sympathy. But they failed to comply with even the simplest of requirements. Theirs is certainly not the case to be presented to this Court to argue that the claims provisions are unreasonable, arbitrary, or capricious.

Petitioners' request for a writ of certiorari to be issued by this Court should be denied. The California tort claims provisions were enacted by the California Legislature pursuant to the mandates of the California Constitution that the Legislature provide the procedures by which claims and suits may be brought against the State of California and its political subdivisions.

There are good reasons why the public entities in California have special rules and procedures as conditions precedent to suit in California. The purposes given by the California courts to these special rules and procedures amply demonstrate that the California claims provisions attacked by Petitioners here effectuate the legitimate state interests behind their enactment.

III

The California Government Tort Claims Act Has Been Held Constitutional by the California Supreme Court. The Sovereign Immunity Statutes Held Unconstitutional by the Washington, Nevada, and Michigan State Supreme Courts Were Substantially Different Than the California Statute. The Intent of the Washington, Nevada, and Michigan Legislatures in Enacting Their Respective Statutes Was to Put All Governmental Entities on an Equal Footing With Private Entities. But the California Sovereign Immunity Statute Was Not so Intended.

As Petitioners concede (Petition, pp. 20-23), the California Supreme Court has upheld the California Government Tort Claims Act against due process and equal protection arguments on three occasions. *Whitfield v. Roth* 10 Cal.3d 874, 889-890 (fn. 20) (1974); *Tammen v. County of San Diego* 66 Cal.2d 468, 481 (1967); *Dias v. Eden Township Hospital Dist.* 57 Cal.2d 502, 504 (1962).

Petitioners have argued that this Court should grant certiorari in the instant case because the Washington, Nevada, and Michigan State Supreme Courts have stricken down their respective state sovereign immunity statutes as unconstitutional and that a conflict thus

exists between the opinions of those state high courts on the one hand and the California Supreme Court on the other hand. Respondent Ventura County submits that Petitioners have misread the import of the Washington, Nevada, and Michigan cases and that no such conflict exists to merit this Court's issuance of a writ of certiorari.

In *Reich v. State Highway Dept.* 386 Mich. 617, 194 N.W.2d 700 (1972), the Michigan Supreme Court scrutinized a 60-day notice of claim statute. That court, in holding the claims provisions violative of equal protection guarantees, noted that:

> "The object of the legislation under consideration is to waive the immunity of governmental units and agencies from liability for injuries caused by their negligent conduct, *thus putting them on an equal footing with private tortfeasors . . .*
>
> *"Contrary to the legislature's intention to place victims of negligent conduct on equal footing,* the notice requirement acts as a special statute of limitation which arbitrarily bars the actions of the victims of governmental negligence after only 60 days . . ." [Emphasis added] *Reich v. State Highway Dept., supra,* 194 N.W.2d, at 702.

The next state high court to strike down its state's notice statute was the Nevada Supreme Court in 1973. But just as the Michigan Supreme Court was confronted with a claims provision in derogation of the general intent of the Michigan sovereign immunity scheme, so was the Nevada Supreme Court.

Indeed, the Nevada Supreme Court looked at Nevada statute NRS 41.031 which stated that the State of

Nevada waived for it and its political subdivisions "immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against individuals and corporations . . ." See *Turner v. Staggs, supra,* 89 Nev. 230, 510 P.2d 879, at 881 (fn. 5). The Nevada Supreme Court then went on to reason that:

> *"Contrary to the mandate of Art. 8, §5 of the Nevada Constitution* [*footnote omitted*] *and the intention of the legislature to place victims of negligent conduct on equal footing* (NRS 41.031), failure to give the 6 month statutory notice arbitrarily bars the victims of governmental tort while the victims of private tort suffer no such bar." [Emphasis added] *Turner v. Staggs, supra,* 510 P.2d, at 882-883.

Following the Michigan and Nevada Supreme Courts in striking down state claims provisions was the Washington Supreme Court in 1975. In *Hunter v. North Mason High School, supra,* 85 Wash.2d 810, 539 P.2d 845, the Washington Supreme Court stated that:

> ". . . Our state has clearly and unequivocally abjured any desire to insulate itself from liability in its absolute waiver of sovereign immunity, *which places the government on an equal footing with private parties defendant.*
>
> "In *Kelso v. Tacoma* 63 Wash. 2d 913, 918, 390 P.2d 2, 6 (1964), we recognized the legislature's manifest intent to 'change the public policy of the state' away from sovereign immunity deprived municipal corporations as well as the

state itself of all vestiges of the shield they had at common law [case cited]. This intention we noted in *Kelso* was clarified beyond any doubt by the passage of Laws of 1963, ch. 159, §2 which provided that the state '*shall be liable* for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation.' (Italics ours.). . . . The unequivocal waiver of sovereign immunity in the 1963 Act thus clearly indicates that 'the [state's] waiver of tort immunity is unbridled by procedural conditions pertaining to the consent to be sued . . .' [case cited].

"*Any policy of placing road blocks in the way of potential claimants against the state having been abandoned,* we cannot uphold nonclaim statutes simply because they serve to protect the public treasury. Absent that justification, there is no basis, substantial or even rational [footnote omitted], on which their discrimination between governmental plaintiffs and others can be supported. Thus, they cannot stand under the equal protection clause of the Fourteenth Amendment to the United States Constitution [footnote omitted]." [Emphasis added] *Hunter v. North Mason High School, supra,* 539 P.2d, at 850.

The Washington Supreme Court in *Jenkins v. State, supra,* 85 Wash.2d 833, 540 P.2d 1363, was faced, within a month of its decision in *Hunter, supra,* with the anomalous situation where the state had different time provisions for commencing suits against counties

than for commencing suits against other governmental entities. The Washington Supreme Court found that:

> "In practical terms RCW 36.45.030, in the context of other statutes relating to governmental tort liability, establishes two distinct levels of classification of discrimination. First, the provision treats counties different than all other governmental entities, including the state, by providing for a significantly shorter period during which actions may be commenced against it. Second, the state discriminates between the victims of the tortious conduct of counties and victims of the tortious conduct of other governmental entities . . .
>
> "No rational permissible reason has been offered, nor have we been able to discern one, which would justify making such a distinction between counties and other governmental entities or between victims of the tortious conduct of counties and victims of other governmental entities . . .
>
> "Accordingly, in the absence of a rational basis for providing otherwise, all persons similarly situated must be provided equal access to the courts for redress of wrongs committed by governmental entities. As stated above, we have been unable to discern any rational basis for treating counties and victims of their tortious conduct any differently than other governmental entities and victims of their tortious conduct. Accordingly, we hold RCW 36.45.030 unconstitutional as violative of Const. Art. I, §12 and U.S. Const. amend. 14 insofar as it purports to impose a different time limitation on the commencement of tort actions against counties than is imposed on the commencement of

tort actions against other governmental entities in the state [footnote omitted]." *Jenkins v. State, supra,* 540 P.2d, at 1367-1368.

It is obvious that the Michigan, Nevada, and Washington State Supreme Courts all held the respective statute of each state unconstitutional for one reason only —that each state had totally waived sovereign immunity. After each state's legislature had expressly declared that governmental and private tortfeasors were to be treated equally with regard to suits thereon, the legislatures went ahead and set different procedural requirements for suits against one entity than against the other. Therefore, the Supreme Court of each state could not help but determine that the different classifications were unconstitutional. No other interpretation of these cases can possibly be made, notwithstanding the dictum offered by Petitioners (Petition, pp. 27-28, 30-35, 38). See, Note, "Notice of Claim Provisions: An Equal Protection Perspective," 60 *Cornell L. Rev.* 417, 432-435 (1975); Comment, "The Constitutionality of California's Public Entity Tort Claim Statutes," 6 *Pacific L.J.* 30, 45 (1975).

The California Government Tort Claims Act, contrary to the statutes in Washington, Nevada, and Michigan, has never been construed to be a total waiver of sovereign immunity so as to put private and governmental entities on an equal footing. In addition to the numerous courts in California which have upheld the constitutionality of the Government Tort Claims Act generally, four California appellate courts have been presented with the Michigan (*Reich v. State Highway Dept., supra*) and Nevada (*Turner v. Staggs, supra*) cases in support of arguments that the California claims

provisions should be held unconstitutional. These courts have all uniformly held that California has not waived sovereign immunity so as to put governmental entities on an equal footing with private entities and all have uniformly ruled that the Nevada and Michigan cases are totally inapposite for that reason. *Stanley v. City and County of San Francisco, supra,* 48 Cal.App.3d, at 582; *Fries v. Combs,* Petitioners' Appendix D, pages D-5—D-6 (1975); *Sifton v. County of Ventura, supra.* Petitioners' Appendix E, pages E-22—E-25; *Roberts v. State of California,* 39 Cal.App.3d 844, 848-850 (1974).

In *Roberts,* the Court, when presented with the Nevada and Michigan cases, said:

> "There is a basic distinction, however, between statutes that aim at placing or actually do place the state or other public entities on an equal basis with private tortfeasors and our California statutes.
>
> "Our statutes were enacted after the decision of the California Supreme Court in *Muskopf v. Corning Hospital Dist.* (1961) 55 Cal.2d 211 [11 Cal.Rptr. 89, 359 P.2d 457], which held that common law governmental immunity must be discarded and indicated a disposition to treat all tortfeasors, public and private, alike insofar as basic liability was concerned. The *legislative response to Muskopf achieved a result entirely different from that which plaintiff urges should have been effected, it enacted a series of statutes to provide, in effect, that there is governmental immunity except for the very specific areas in which the statutes allowed suits.* (See, Gov. Code, §815; *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 931-932 [101 Cal.Rptr. 568, 496 P.2d 480]) . . .

> "The argument in plaintiff's closing brief that 'when the state undertakes to divest itself from the cloak of immunity it must stand on an equal basis with other similarly situated tortfeasors' would have merit only if the California Legislature so provided, or if some legislative action indicated that the reasons for the claims statute no longer had compelling force. But it did not. The fact that other states moved in that direction is irrelevant . . ." [Emphasis added] *Roberts v. State of California, supra,* 39 Cal.App.3d, at 849.

Just as the California courts have ruled that there is a substantial difference between statutes which intended to totally waive sovereign immunity and thereby put governmental and private entities on an equal footing, and have ruled the California statutes as constitutional on this basis, other state courts have found their respective states' statutes constitutional because sovereign immunity had not been waived. See, *e.g., Tessier v. Ann & Hope Factory Outlet, Inc.* 332 A.2d 781, 782-783 (R.I., 1975) (distinguishing *Reich* and *Turner, supra*); *Wilson v. District of Columbia* 338 A.2d 437, 438 (fn. 2) (D.C. Ct. of App., 1975) (distinguishing *Reich* and *Turner, supra*); *Newlan v. State* 535 P.2d 1348, 1352-1353 (Idaho, 1975); *Awe v. University of Wyoming* 534 P.2d 97, 103-104 (Wyoming, 1975); *Brantley v. City of Dallas* 498 S.W.2d 452, 455 (Tex. Civ. App. 1973), cert. den. 415 U.S. 983 (1974) (distinguishing *Reich, supra*); *Lunday v. Vogelman* 213 N.W.2d 904, 908 (Iowa, 1973) (distinguishing *Reich, supra*); *Krause v. State* 31 Ohio St.2d 132, 285 N.W.2d 736, 744-745 (Ohio, 1972); *Housewright v. La Harpe* 51 Ill.2d 357, 282 N.E.2d 437 (Ill., 1972); see also Annot., 59 A.L.R.3d 93.

As discussed above, Respondent Ventura County submits that there is no real conflict between the Michigan, Nevada, and Washington opinions on the one hand and the opinion of the California Supreme Court on the other hand. Each state high court has construed its respective sovereign immunity statute as either a total waiver of sovereign immunity thus disallowing legislative classifications or as not a total waiver of sovereign immunity thereby allowing a proper legislative classification. Each court has ruled on grounds peculiar to its state. This Court denied a writ of certiorari in *Turner v. Staggs, supra,* cert. den. *sub nom. Clark County v. Turner* 414 U.S. 1079, 94 S.Ct. 598, 38 L.Ed.2d 486 (1973) because the judgment in the state court rested on adequate state grounds. Respondent submits the same is true for the instant Petition, because of the distinction that California has not totally waived sovereign immunity as have Washington, Nevada, and Michigan. The Petition for a Writ of Certiorari should therefore be denied.

IV

The Claims Provisions of the California Government Tort Claims Act Are Ameliorative as to Disabilities Affecting Minors and Are Not so Unreasonable so as to Be Ruled Unconstitutional.

Petitioners have argued that the claims provisions in question here are unconstitutional both on their face and as applied to minors. Respondent submits that the above discussion adequately shows the claims provisions to be constitutional on their face.

To the argument that the claims provisions are unconstitutional as applied to minors, Respondent Ven-

tura County respectfully refers this Court to the opinion rendered below by the California District Court of Appeal in *Sifton v. County of Ventura* (Petitioners' Appendix E, pp. E-13—E-22). As the court pointed out, especially at pages E-20—E-22, California has liberal claims provisions to ameliorate any possible disabilities incumbent on minors. Certainly, these ameliorative provisions demonstrate the justness of California's claims requirements imposed on minors. *Cf., Murray v. City of Milford, Connecticut* 380 F.2d 468, 473 (2d Cir. 1967).

Conclusion.

The claims provisions of the California Government Tort Claims Act were adopted by the California Legislature pursuant to the California Constitution. The Legislature, in accordance with long-standing principles of sovereign immunity permitting states to impose conditions on suits thereon, placed certain restrictions on the right to sue the State of California or its political subdivisions. The restrictions imposed bear a rational relationship to the purposes intended and are thus constitutional. In effectuating a declared California public policy to favor minors, certain ameliorative provisions were established for the claims of minors.

The California Legislature did not intend to totally waive sovereign immunity so as to put governmental entities on an equal footing with private entities. The Michigan, Nevada, and Washington state legislatures totally waived sovereign immunity. For that reason, the Supreme Court of Michigan, Nevada, and Washington ruled that legislative classifications of governmental entities distinct from private entities in their

states were unconstitutional. Because of this basic difference, no conflict exists between the opinions of the California Supreme Court (upholding the California claims provisions) on the one hand and the opinions of the Michigan, Nevada and Washington Supreme Courts (striking down the claims provisions of their respective states) on the other.

It is respectfully submitted that, inasmuch as no conflict exists for this Court to decide, the instant Petition for Writ of Certiorari be denied.

Respectfully submitted,

HENRY G. BODKIN, JR.,
Attorney for Respondent Ventura County.

TIMOTHY J. SARGENT and
JOHN B. GOLPER,
BODKIN, MCCARTHY, SARGENT & SMITH,
Of Counsel.